

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**ESTABLISHMENT AND PROJECT REVIEW COMMITTEE MEETING**  
**March 27, 2025, 10:15 AM**  
**ESP, CONCOURSE LEVEL, MEETING ROOM 6 ALBANY**  
**TRANSCRIPT**

**Mr. Robinson** Hello, everybody. Welcome, welcome. I'm Peter Robinson. On behalf of myself and Jeff Kraut, Chair of the Council, I'm pleased to welcome you to this meeting of the Establishment and Project Review Committee and calling the meeting to order. Welcome to all of you, my colleagues on the Council and the Committee, and for the DOH staff, and of course for the members of the public that are present as well as applicants. Just a few reminders, as you hear at the start of every meeting, that this meeting is subject to the Open Meeting Law and is also being broadcast over the internet. You can access the webcasts at <http://NYHealth.Gov>. The on-demand webcast will be available not later than seven days after the meeting for a minimum of thirty days. And then, after that, a copy will be retained in the department for four months. You know about the ground rules with regard to the fact that there's synchronized captioning.

**Mr. Kraut** We're getting texts that there's a horrendous echo online, and nobody can hear what we're saying.

**Mr. Robinson** Should I keep going?

**Mr. Kraut** Keep going.

**Mr. Robinson** Wherever I was with regard to synchronized captioning just don't talk over each other, please. Make sure that when you do speak the first time you introduce yourself, who you are, whether you're a member of the council or staff. That'll help with the broadcasting company as they record the meeting. Also note that microphones are hot. Side conversations will be picked up. Be aware of that. Most of you are regulars here, but for those of you that are not, there's a form that needs to be filled out before you come into the room, or if you've already come in, go out of the room and fill out the form. It's required by the Joint Commission on Public Ethics in accordance with Executive Law, Section 166, and that form's also posted on the Department website. You can actually fill it out in advance in the future. We thank you for your cooperation as we try to do things in compliance with laws and regulations here.

**Mr. Robinson** Onto our work. Calling the first application, this is 242268C, Hospital for Special Surgery in New York County. I'll note an interest by Dr. Lim. This is to construct Article 28 space in a new 12 story building on the main campus to include imaging services and inpatient beds with no change in the total certified beds. This CON amends and supersedes an earlier application, CON Number 191311. The department is recommending approval with conditions and contingencies.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second?

**Mr. Robinson** Dr. Torres.

**Mr. Robinson** Ms. Glock, is it you?

**Ms. Glock** It is.

**Ms. Glock** Thank you, Mr. Robinson.

**Ms. Glock** Good morning, everyone. This is Shelly Glock from the department. The hospital for special surgery is a 215-bed hospital located on East 70th street in New York County. This project will amend and supersede a previously approved 2019 Certificate of Need application. Construction started in October of 2021, following approval of a new 12-story, 94,000 square foot tower. The new building will include three floors of Article 28 medical surgical inpatient units with thirty-five single bed private patient rooms, 10 X-Ray rooms and clinical and support space as well as some non-Article 28 service space. There will be no change in the number of certified beds or services. There have been no material project scope changes from what was included in the original CON project. This amendment is strictly limited to an increase in project cost resulting from the delay in construction following the COVID-19 pandemic. The applicant is projecting an inpatient payer mix of almost 4% Medicaid/55% Medicare with the noted discharges, about 10,000 discharging by year three. They're also projecting an outpatient payer mix of 4.33% Medicaid with 26% Medicare with about 771,000, that should be visits, not patients, in year three. The applicant HSS is reporting that approximately 1.8% of HSS's total 2023 patient revenue was provided in charity care and financial assistance. The total project cost includes \$123,576,006 in Article 28 costs that will be funded with both equity and bond financing. The department is recommending approval of this amended application with conditions and contingencies.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Any questions from the members of the Committee of the Council?

**Mr. Robinson** Dr. Berliner.

**Dr. Berliner** Yes, for the applicant, please.

**Mr. Robinson** Please introduce yourselves.

**Mr. Cicero** I'm Frank Cicero, a consultant to the applicant. To my right is Dr. Jillian Rose, Vice President and Chief Equity Officer of Hospital for Special Surgery. To my left is Melissa Keefer, Vice President and Director of Facilities for Hospital for Special Surgery.

**Mr. Robinson** Thank you.

**Dr. Berliner** Thank you.

**Dr. Berliner** First for my colleagues on the other side, you know, I'm in the penalty box. What can I say? My question is not about the project per se, which I think is fine. Nor is it about the institution, which, I think is excellent. My question is about parking. Having spent several recent ventures at HSS parking is an abomination. I'm wondering if you guys have any thoughts about how you could deal with that. I have a second question, which is a little bit more metaphysical if you will. You're squeezed into those blocks South of York. I think New York Hospital or Weill Cornell took over or took over part of the Sotheby's building.

You're already building out over the East River Drive. What are your future plans? I mean, where can you go? Those are my questions. Thank you.

**Ms. Keefer** Again, Melissa Keefer. To address your question about parking, by nature of being in Manhattan, in New York, there's a lot of traffic and parking considerations that the hospital continues to be very concerned about. Luckily, the Department of Transportation has been working with us and several of our neighboring institutions to do some pre-studies with the department, the community board to understand traffic and how to improve that. The Department of Transportation is just about to kick off an eighteen-month study to try to improve the area in the Upper East Side and the corridor in and around the hospitals, and HSS is looking to partner with them actively to try and solve the parking and traffic issues.

**Mr. Kraut** Excuse me. Isn't part of the problem you're also experiencing is congestion pricing? You're above 59th, right? You're above the zone. You have all the parking garages are getting filled also with people who dump the cars and then use public transportation right above the congestion pricing zone.

**Dr. Berliner** But if I can just say, I mean thank you for your response, which is helpful, although eighteen months seems like a while to do planning. There's kind of a chicken and an egg patient. So many of your patients have limited mobility. They're always taken out of the hospital in a wheelchair. The staff, for reasons that make perfect sense won't bring them down until the person or the car picking them up is there. The car picking them can't get there because it's always so crowded. It just compounds the situation. Yes, there's a parking lot across the street. You're also on streets that dead end.

**Mr. Robinson** I would agree with you. I would say that it doesn't appear as though there's an addition of significant patient volume as a result of this, because the bed count is remaining the same. This is essentially setting up private rooms. I'm not disagreeing with you, I'm just saying I think the problem is not being necessarily exacerbated by the project, I guess.

**Dr. Berliner** Just the second question about what are your future expansion plans and where might they be?

**Mr. Cicero** To answer that question, HSS is in the middle of developing multiple offsite locations, particularly for ambulatory care. We have a very large application that was approved by the department last year. They're in the process of moving that forward. There's clearly recognition that they need to expand their footprint, particularly on the ambulatory care side.

**Dr. Berliner** It won't be in the current location, or it can't be in the current location.

**Mr. Cicero** Correct, this is a new large offsite location.

**Mr. Robinson** Ms. Monroe.

**Ms. Monroe** Thank you.

**Ms. Monroe** Ann Monroe, member of the council. I don't live in the city, but the reputation of the Hospital for Special Surgery is so great that it permeates the rest of the state. I noticed that your projected services to people on Medicaid is quite low. I wondered why

you think that's the case. Why aren't Medicaid/people funded by Medicaid coming to the hospital for special surgery for special surgery? What's your outreach plan? Why do you think the percentage is so low? If you think it's too low, what might you do about it?

**Mr. Cicero** Thank you, Ms. Monroe.

**Mr. Cicero** It's a very fair question, and a fair question by Ms. Utley as well. Dr. Rose is going to speak to it. Just a couple things I will say first before Dr. Rose speaks. First of all, there's a relatively new senior administration at HSS at all of the three top positions at the C-suite level. This is a formal initiative to take on what you're... The question you're asking both at that level and at the board level. It doesn't seem like a lot, but when this application was first approved, the percentage was 1.8%. That initiative has been in place for a little while. They're making improvements. I do think that to say that 1.8% of revenue is going to charity care is probably not fair to say that that's low. I think it's high and 23 million is helpful. In addition to that, I think you'll hear from Dr. Rose that there are some really strong programs being developed with this an area of excellence for this excellent hospital. Thank you.

**Ms. Monroe** Before we hear from you Dr. Rose, I'd like to ask the staff to track this number for the Hospital for Special Surgery, because it is so unique, and it has plans in place to increase that number. I'd you to come back to us at some reasonable point in time, a year, whatever, with what's happened with that percentage. Sorry for interrupting you, Dr. Rose.

**Dr. Rose-Smith** No problem.

**Dr. Rose-Smith** Good morning, everyone. Dr. Jillian Rose-Smith, Vice President and Chief Health Equity Officer at Hospital for Special Surgery. I just want to spend a minute or so just sharing what our plans are and the structures that we have in place to invest in our continued commitments to our community. In 2023, to ensure that we had more appropriate access levels, we started accepting Metro Plus Medicaid at the end of 2023, which helped us to cover about 80% of the managed Medicaid population in New York. The second thing that we did, realizing that we are on the Upper East Side and for most people it takes about two trains and a bus or a six block walk before the Second Avenue Subway, we realized that we needed to get out into the community to spread the word about access because most of our Medicaid population didn't know they have that access although our hospital is very popular. We established the Office of Health Equity in 2023 with three different goals. One, access to care. Two, community partnership. Three, looking at data to really make a dent in orthopedic healthcare disparities and really understand that we're providing our brand promise to all levels of patients. On the access to Carefront, we have really dug into partnering with federally funded healthcare center like Community Healthcare Network, where we have a formal partnership for referrals where their patients get a four-to-six-week guaranteed appointment at our center to funnel patients from our community into HSS. We also have a similar partnership with the Damien House. Both centers have fifteen different primary care centers across New York. We hope to ensure that relationship remain a robust one. In addition to that, part of what we're doing is understanding our patient population. From our Community Health Needs Assessment, our patient told us that transportation was a big issue for them. We heard that issue about transportation. The other issue that they told us is primary care was a big issue. Our partnership with Community Health Network and Damien House is a two-way partnership. They send us their referrals, but then we're able to move forward with sending patients back to them for primary care. As you know, clearance for surgery is of a top

priority. One, you have the car to get in the door as a part of access. Two, are you going to get the surgery? Medicaid populations often have multiple comorbidities that prevent them, even when they're in the door from accessing surgery. We've partnered with our community health center partners to ensure that people can get their A1C under control to ensure they have cardiac clearances. We are invested in Nurse Practitioner Navigation Care Models to ensure that those patients are managed and optimized so that they actually can get to surgery. We're hoping to expand that program with continued education about appropriate referrals, but also ensuring that we're partnering with community about key lifestyle medicine issues. That's part of the access piece. We're also expanding our PSS operation. Physically, we're expanding to more Article 28 spaces so that we can speed up the preop for our Medicaid patients. That project is underway. We're looking to invest in our facilities as well as in our team to ensure we support that access for our patients as well. As Frank mentioned, we do have a new COO, a new CFO, and a new COO. That team has really put together a board task force. Dr. Kelly and I, who is our CEO, we Chair the Health Equity Task Force around access, along with four board members, a patient, and key hospital stakeholders. We have a Health Equity Strategic Plan that have targets to open up access to our community. Other things that we're doing are to ensure that people know about the services, and we are able to open access and increase those percentages are around community prevention, education, attending different health fairs to ensure that people know that we're there on the Upper East Side and they can reach us. We also have a program called Voices Medicaid Managed Care Education. The insurance landscape is very confusing. People do not understand a lot around some of the access complication for specialty care versus their primary care needs. We have three full-time staff members in that program educating people when they get into the door at the hospital, but also outside in the community around the insurances that we take around how to get care in being navigators from community to appointment site to ensure that we have that access as well. We have a lot of work to do. We're continuing that work with the right structure in place as we move forward.

**Ms. Monroe** Those programs, I'm sure show great promise. I know we'll all be happy to celebrate with you in about a year when we see those numbers moving up, indicating success. Thank you very much.

**Mr. Kraut** Just to follow up, how many doctors on the surgical staff accept Medicaid and will perform Medicaid procedures on your surgical staff?

**Dr. Rose-Smith** On our surgical staff, we have a... Frank, I don't know if you want to speak to those numbers.

**Mr. Cicero** I don't know.

**Dr. Rose-Smith** I'm not aware of the percentage, but the way that it works, if a patient with Medicaid come into the facility, we what's called a facilities or a bundle number. You may not accept the Medicaid plan, but you can still operate on the patient. I don't know the exact number of surgeons on our side that accept Medicaid, but once the patient come into the system. they're able to get the surgery based on the facility agreement.

**Mr. Kraut** I just went online, and I identified myself as a Medicaid patient for total knee replacement and no physician is listed. You refer me to an ambulatory care center. What is the method for a Medicaid patient to go online, make an appointment? I think this is the kind of issue. Is this something that you're going to require your doctors to accept Medicaid as part of this plan that you just described?

**Dr. Rose-Smith** Yes.

**Mr. Kraut** I think one of the things we'd like to know is a list of the doctors who will be accepting and performing your procedures on Medicaid patients. And then if you promote that within the communities, the FQHCs and the other things, I think that's one of things that you probably would be helpful in meeting the new goals that the new leadership has done.

**Dr. Rose-Smith** Yes, I can say a little bit about that, Frank, before you go.

**Dr. Rose-Smith** Just to share the access pathway, we are updating our online system to ensure that Medicaid patients can have access and schedule through that system. We just had a Chief Access Officer who was looking at how patients get into our system. She'll be rolling out her plans as it relates to online scheduling. Our patients do call our pre-access line. They're funneled into our triage system where we find out from them what's the best clinic for them to get into or what's best service? There's a triage process for those patients. The triage can be as simple as answering a few questions to our pre-access people so that they can place you into an appointment or it can be as you come to our facility for our first appointment where our PA staff or our doctors would perform that triage and indicate whether you need psychiatry or whether you need a surgeon or a surgical opinion. You will not see that process if you're booking online. There's a triage process in place that will then funnel you to the right systems. What we found before is that an open access system, when people are just calling about, I have back pain or knee pain. They're sitting in the queue. They're waiting for about four or six weeks, however long the appointment is. They get to us, and they are in the wrong place. Really to optimize access, we have put in place a triage process to ensure that people are getting to the right physicians in a timely way.

**Mr. Kraut** Just to make a point, and it gets back to accessibility. If I put in, I'm an Aetna patient and I put total knee replacement, there are twenty or thirty doctors who I can book online. Medicaid patients have to call. Again, another issue. I understand the benefit of what you're saying. I'm just suggesting if you're truly committed to access, I think your front door needs to be revisited.

**Mr. Cicero** Mr. Kraut, just to finish off the comments, we hear what the council is saying. We understand the letter. The Chief Financial Officer and Chief Operating Officer, subsequent to that letter, scheduled a call with me to brief them on this situation. I will be taking to them the questions that were raised here today.

**Mr. Kraut** I'm not speaking against the application or the need for it. Don't misunderstand me. This is a unique opportunity that we get to reinforce the issue of access for everybody. That's all. When you're sitting in front of us, we're going to take advantage of it. Thank you.

**Mr. Cicero** We understand that. We're definitely committed to having a real discussion.

**Mr. Robinson** Mr. Lawrence and then Dr. Kalkut.

**Mr. Lawrence** Harvey Lawrence, a member of the council. It's really gratifying to hear that you're working with FQHC, as you mentioned. There are probably over seventy in the state, and I suggest that you reach out to the state association. I know that they would welcome an opportunity to dialog with you about how you can work with more. Many more

of the FQHCs are across the city as well as the state. I'm listening to Dr. Berliner's question concerning parking and Ms. Monroe's question about Medicaid. Any thoughts about maybe expanding beyond the gold coast on, on the East side into maybe some of the outer boroughs, maybe Brooklyn?

**Mr. Cicero** Mr. Lawrence, it actually has already happened. HSS has been doing that since the end of last decade. They are starting to move to other boroughs and to Long Island. I think it's definitely in the plans.

**Mr. Lawrence** I think that's important. Access, especially for Medicaid patients, the closer you are, the greater the opportunity for people to access in their neighborhoods and really not coming to Manhattan on the Upper East Side could be a challenge for a lot of folks. To the extent that you can have offices that are in the out of boroughs would be really great, especially Brooklyn, as a Brooklyn person myself.

**Dr. Rose-Smith** Just to add to that, in terms of our continued expansion, we just started an exciting partnership with Harlem Hospital to improve their orthopedic care, to bring orthopedics care back into the backyards of those communities as well. In addition to the comment about reaching out to additional federally funded healthcare centers, which we will, thank you for that. We'll reach out to the larger organization. I think our goal is to also seek partnerships where we can with other facilities in communities to explore what possibilities there are to support the work that they're doing and partner together as well. Harlem is one of those examples that we're moving forward with in supporting, building up their orthopedic practice in terms of their anesthesia education, as well as looking at best practices in orthopedic care and community education as well. We're excited about those possibilities for us as we open up access as well

**Dr. Kalkut** Hi. I'm Gary Kalkut, a member of the council. As a frequent user of the FDR, I sort of marvel at what's going on up there. I didn't realize there were connections both to your ambulatory building and the main hospital, which is a terrific thing for patients and employees. I had two questions for you, one for Dr. Rose. Do you have a target for a Medicaid mix with the programs you're putting in place and what sounds like a commitment pre-existing and going forward for Medicaid patients as a percentage of the payer mix?

**Dr. Rose-Smith** As we mentioned before, we have a new CFO who is probably a month old at the institution. We were having some conversations yesterday. We have some proposed targets. We'll be building out the reality of those targets to ensure that we are hitting or on point with being able to hit those targets for our Medicaid population. So more to come on some specific numbers around that, but we do have some specific targets in mind that we want to hit based on the population as well as based on the structure that we've created to outreach to the community, funnel people into the organization, looking at some of the access realities based on transportation and where people live, work, and play, so we're looking to solidify those targets very soon.

**Dr. Kalkut** Thank you.

**Dr. Kalkut** Second, could I just ask you for just a brief summary of your charity care policy and how people access that?

**Dr. Rose-Smith** Of what policy, excuse me?

**Dr. Kalkut** Charity care.

**Dr. Rose-Smith** Our charity care policy, we're very proud of our charity care policy. It's about 700% of the federal poverty level. A family of five making about \$250,000 can access completely free care at HSS. We also offer partial charity care. We continue to improve the charity care model, and very, very generous to support our patients.

**Dr. Kalkut** The 700 percent is the hospital policy?

**Dr. Rose-Smith** Yes, that's the hospital policy.

**Dr. Kalkut** And for the physicians, does it extend to them?

**Dr. Rose-Smith** it extends to the physicians as well. Any service that you receive at HSS, you can access Charity Care for, and physician services is included in that policy as well

**Dr. Kalkut** Thank you.

**Mr. Robinson** Are there any other questions for the applicant?

**Mr. Robinson** This is a very good discussion. I appreciate the responses and look forward to hearing about how those plans for access and upping the Medicaid population in your practice and your facilities is going to unfold. We'll look forward to that.

**Mr. Robinson** I think with that, I'm going to call the question.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** The motion carries.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Calling application 242324C, Long Island Jewish Medical Center in Queens County, noting a conflict and recusal by Mr. Kraut who's left the room and an interest by Dr. Lim. This is to certify eleven bone marrow transplant beds and perform renovations to create a new bone marrow transplants unit. Just one note here that on Page 3 of the exhibit under the table labeled applicant projected payer mix. The term private pay should state charity care instead. If you want to make that correction in your copy of the exhibits, that would be appreciated. With that, the department is recommending approval with conditions and contingencies.

**Mr. Robinson** Motion by Dr. Torres.

**Mr. Robinson** Second by Dr Berliner.

**Mr. Robinson** Ms. Glock.



**Ms. Glock** Long Island Jewish Medical Center is a not-for-profit hospital located New Hyde Park in Queens County. This application is requesting approval to certify eleven bone marrow transplant beds in addition to the four currently operated, to function as a dedicated bone marrow transplant unit on the fourth floor of the oncology building at LIJ on the main campus. Excuse me. Upon completion, Long Island Jewish Medical Center will have a total of fifteen bone marrow transplant beds with an increased total certified bed count of 1,015 beds. According to the applicant, since 2014, adult bone marrow transplants cases have increased a little over 24% from 340 to 422, with the average length of stay increasing from 25.6 days to 27.7 days in the service area reflecting increasing case complexities. This project will help to address this gap by improving access and reducing the need for patients to seek care outside of the service area, thereby enhancing care continuity. Currently adult patients presenting to LIJ that require bone marrow transplant are admitted to the bone marrow transplant at North Shore University Hospital, also a part of the Northwell's Health System. The applicant also noted that a large proportion of the residents travel outside of the service area to receive these services into New York, Bronx, and Westchester counties. This involves significant travel times, expense, and logistical challenges, particularly for elderly patients and families. By adding an adult bone marrow transplant program at LIJ, these burdens can help to be alleviated, providing more convenient and accessible care for the service area residents. The applicant is projecting twenty-five adult bone marrow transplants discharges in year one and seventy-one dischargers by year three, with Medicaid projected at 28% and charity care at 7%. Total project costs will be met with equity from Northwell Health. The department is recommending approval with conditions and contingencies on this project.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from the members of the committee or the council?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anybody from the public wishing to be heard on this application?

**Mr. Robinson** Yes, of the department or the applicant?

**Ms. Monroe** I don't know. I guess for the applicant. I'm just curious. Where are these BMT patients getting bone marrow transplant now that they would be coming into this hospital or are they not getting it?

**Mr. Robinson** Can we ask the applicant to come forward please?

**Mr. Robinson** Thank you.

**Ms. Monroe** I mean, that's a pretty big increase from four to fifteen. You must have an idea where these patients are going to come from.

**Mr. Robinson** Could you first please introduce yourselves?

**Ms. Mercieca** Hi. Rita Mercieca, Chief Administrator for the Cancer Institute at Northwell.

**Dr. Al-Homsi** Samer Al-Homsi. I'm the System Chief of Blood and Marrow Transplantation and Cell Therapy at Northwell.

**Ms. Frawley** Renee Frawley, Assistant Vice President of Strategy, Northwell Health.

**Mr. Robinson** Thank you.

**Mr. Robinson** You heard the question. If you have comments you can make on that, we'd appreciate it.

**Dr. Al-Homsi** Thank you very much for the question. Many of these patients are either not getting transplanted for the reason we heard, because of the hardship of going to the city to get transplanted, but many are also going to city. Like we heard the duration of stay of three to four weeks, it's really a hardship not only on patients, but also on family. It's not only the stay in the hospital, but as you probably know, there is intense care after the procedure requiring very frequent visits to our offices. Like I said, these patients are either not being transplanted or going to the city to get transplanted.

**Dr. Friedrich** Dr. Friedrich, council member. More like a technical question. Can they be repurposed for gene therapies? Is that some of the direction why there is such an increase from the current beds because of the future potential of gene therapies, potential?

**Dr. Al-Homsi** Thank you very much. That's a very good point. The answer is yes, gene therapy is currently for illnesses like sickle cell anemia or thalassemia is essentially blood and marrow transplant where we collect cells, we modify the cells and alter the genes involved in disease and then they are transplanted. Essentially, it's a transplantation procedure. These beds would be used also for this kind of services. The other indications which are increasingly common is the use of cell therapy, which is also under our services. These beds would be used also for these treatments. This is not now only applicable to cancer, but increasingly applicable to other disorders, including rheumatological disorders.

**Dr. Kalkut** Good morning. I'm Gary Kalkut, a member of the council. I had a question, and maybe I'm not reading this right. You're adding eleven beds at LIJ. You currently have 422 cases with those four beds. When I read the table about twenty-three BMT by facility, Manhasset has eighty-two cases in four beds. It looks like it's not symmetrical. I was just wondering if there's a reason.

**Ms. Mercieca** I'm sorry, how many cases did you say, 422?

**Dr. Kalkut** That's what's in the separate.

**Ms. Mercieca** Those are 422 cases in the total service area that are being done by a multitude of organizations. 75% of them travel to the city for their transplant.

**Dr. Kalkut** They're not specifically ones done in the four beds currently at Long Island Jewish?

**Ms. Mercieca** No, the four beds at Long Island Jewish are pediatrics.

**Dr. Kalkut** I see.

**Ms. Mercieca** In the Children's Hospital, yes. They do about seventy transplants a year.

**Ms. Mercieca** You're welcome.

**Mr. Robinson** Is there anyone from the public wishing to speak on this application?

**Mr. Robinson** Assuming no other question from members of the committee or the council, I'll call the question.

**Mr. Robinson** All in favor?

**All Aye.**

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** The motion carries.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Have Mr. Kraut return, please.

**Mr. Robinson** This next application 241013C, Montefiore Mount Vernon hospital in Westchester County. This is to perform renovations to upgrade and expand the Emergency Department, Surgical Department and Outpatient Wellness Center. The department is recommending approval with conditions and contingencies.

**Mr. Robinson** May I have a motion?

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Dr. Torres, second.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** Montefiore Mountain Vernon Hospital is a voluntary not-for-profit 121 beds located in Mount Vernon, Westchester County. This application is seeking approval to upgrade and expand the Emergency Department, the Surgical Department, and Outpatient Wellness Center, as well as the lobby and some support areas. There will be no change in beds or services. The total project cost of \$45,708,832 will be funded with a little over \$41 million statewide healthcare facility transformation program, one grant, and about \$4.6 million in an inter-company loan from Montefiore Health System. This project will renovate and expand the existing emergency department by increasing the number of treatment bays from fifteen to twenty-seven. This significant increase in the treatment base will help to reduce wait times and accommodate the projected increase in patient visits. The project also provides renovation to expand the Surgical Department. The surgical suite will consist of five ORs, two gastrointestinal GI procedure rooms, with two additional empty shell spaces that can be later used as ORs in the future should that need arise. Both the historical and the projected ED utilization in the surgical volume is depicted in the staff report. I won't read that to you. By year three, the applicant is projecting 42.7% Medicaid for inpatient discharges and little over 63% Medicaid for outpatient visits. The department is recommending approval with conditions and contingencies.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Questions from the members of the committee or council?

**Mr. Kraut** I just want to make a comment. We talk about as we kind of look at regulatory reform, I think this is an application that was the beneficiary of a facility transformation grant. 91% of its capital cost is being paid for through that grant. It's an entity that has a 43% Medicaid, 63% outpatient Medicaid is the type of I think where the state is doing these competitive reviews and awards it. These applications should take a different path, maybe than having to come for full CON review and to permit the state to administratively process it. As we think about kind of categories of projects that might be subject to regulatory reform, I would suggest this type of facility, a safety net facility, where the state has already kind of reviewed it competitively, should go there. Obviously, not speaking against the project in any dimension.

**Mr. Robinson** Just to add to that, the other side of that comment is that it's actually good to see where the state is making commitments to an area, Mount Vernon that's certainly from an economic standpoint in need of support. The facility clearly has been aging and needs upgrading. All of these investments are actually in support of a very needy population, should we say, within New York State. Actually, complimenting the department on the fact that they've made this investment in this community. I think just having that be visible and making the broader public aware of it is actually the upside of actually bringing it here.

**Mr. Kraut** Well, it doesn't mean that we wouldn't be getting reported.

**Mr. Robinson** I still open it up for questions if there are any from members of the committee of the council.

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Good job department on this one.

**Mr. Robinson** We're moving to Ambulatory Surgery Center Construction Applications. This is 243333C, Endoscopy Center of Western New York, LLC in Erie County. Certifying a Single Specialty Extension Clinic for Gastroenterology to be constructed at 250 Woodward Road in Orchard Park, by the way, where the Bills play, and transfer 11.035% membership interest from a current member LLC to another current member LLC and add three members to that member LLC. With that said, the department recommends approval

with conditions and contingencies, with an expiration of the operating certificate five years from the date of issuance, and that's their recommendation.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Ms. Glock** The Endoscopy Center of Western New York operates a single specialty freestanding Ambulatory Surgery Center for Gastroenterology at 60 Maple Road in Williamsville and that's in Erie County. This application is seeking approval to construct a single specialty Gastroenterology extension clinic at 250 Windward Road in Orchard Park and to change the center's ownership to create two ownership divisions of the center. The extension clinic will have three procedure rooms. It will be named the Endoscopy Center of Western New York Orchard Park. The center currently has two members, 60 Holdco LLC at 60.93% membership and PE Healthcare Associates at 39.07. This application is proposing to just transfer some ownership units from PE Healthcare Associates to 60 Hoco to add three new individual members to 60 Holdco LLC and to create two ownership divisions within the center. The location at 60 Maple Road will be referred to as the Maple Road Division and this new extension clinic will be referred to as the Center's South Towns Division. The center will continue to be owned by the two same members, 60 Holdco at 7.1965 and PE at 28.035%. The number of projected procedures in year three is 8,802 with Medicaid projected to be 13.6% and charity care at 7.5%. These projections are based on the current practices of the participating surgeons. The applicant states that 70% of the projected extension clinic procedures are currently being performed at the center's main site. They will migrate to the extension clinic upon approval. In addition, a few of the physicians who will practice at the South Towns Division, and the new extension clinic are currently performing their procedures in private office-based surgical practices. None of the projected extension clinic procedures are currently being performed in hospitals. A letter of opposition to this project was received from the Center for Ambulatory Surgery, located at 550 Orchard Park Road, stating that the proposed center is a duplication of services and would have an adverse impact on the Center for Ambulatory Surgery located approximately five miles away, due to three endoscopists and an additional physician from the ownership room performing cases there, but the impact was not quantified. This letter and the applicant's response, I believe, was distributed to the committee members. A Health Equity Impact Assessment was considered in review of this application. The total project cost of \$5,960,171 will be met with equity from ongoing operations, equity from the landlord and a bank loan. The department is recommending approval of the project with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Ms. Monroe** I have a general question for the department. The letter of opposition talked about the impact on their business and what they needed another competitor. What I'm wondering is how do you assess the quality of the work that's being done in already licensed places such as this, that we can compare that to the concerns that the letter writer has. I mean it's one thing to constrict competition and say we don't need one because there's another one already there. How do you evaluate that? How does quality play into that? I could understand if you looked at we don't need another one within five square miles or whenever we already have one. But the other question is, what's the quality level

of the one that's already in place that would also weigh into the decision about whether another one is appropriate? If it's high quality and it's already there, that's one thing. If we don't know what kind of quality it's providing and because they're already there they get a jump up. Could you talk about how you look at quality in terms of competition and location?

**Ms. Glock** Hi, Ann. Thank you for the question. In terms of looking at the public need for this Ambulatory Surgery Center, we really looked at what is the projected volume, where are the patients going to be coming from. We looked at the Health Equity Impact Assessment, which talks about a need for additional services in that area. We do know that we send a letter out to the hospitals within the service area to see if there's any opposition from the hospital side. We do not specifically engage with the other ASCs or look at their quality as part of making a determination. This topic was actually taken up by PHHPC. I think it was back in 2019, I believe where we looked at this topic with ASCs and what's the potential impact on the other providers in the service area. At that time, PHHPC decided on a policy where unless a proposed Ambulatory Surgery Center was going to have such a negative impact on a sole community hospital or critical access hospital, we would not restrict by increasing access in that area. To answer your question directly, the quality of the current ASC was not part of that decision making, but that quality of course is something that's looked at as ongoing surveillance.

**Ms. Monroe** Do you do quality reviews on ASCs like you do on hospitals and private physicians? I just don't know.

**Ms. Glock** When an applicant proposes a construction project, our division of hospital services. Their staff does a compliance look at that who's applying, putting in an application, of course for establishment there is a character and competence review. The compliance of the applicant and the quality issues of an applicant might be considered but not necessarily another facility within the service area if that makes sense.

**Ms. Monroe** You do look at performance and quality measures.

**Ms. Glock** If you'll notice in the staff reports, there's always a section that talks about the compliance of the applicant. How is the applicant performing in compliance with current state and federal regulations?

**Ms. Monroe** That includes quality measures or organizational and structural measures?

**Ms. Glock** It would look at those surveillance standards that we look at. I don't want to speak for the surveillance program. There are certain surveillance standards that are surveyed against both federal and state.

**Ms. Monroe** Thank you.

**Dr. Friedrich** Dr. Friedrich, member of the council.

**Dr. Friedrich** Ms. Glock, just I want to make sure that I understand that correctly. You're not looking at clinical quality, correct? You're looking at the quality of the applicant. I'm just curious, because there are established clinical quality measures that the department might or might not have access to.

**Ms. Glock** If you look at the program reviews and our staff exhibit, you'll see a section on compliance. The staff with a construction application is looking at the compliance record of the applicant. You'll see listing of any survey deficiencies, enforcements, those types of things listed under that compliance. Yes, they're looking. If they're looking at the track record, if you will of the applicant.

**Mr. Robinson** Other questions?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anyone from the public wishing to speak on this application?

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** This is an application for certified home health agency construction. Application 251016C, Marquis Certified Home Care LLC in Albany County. This is to allow Marquis to acquire the Certified Home Health Care operated by Community Health Center of St. Mary's Health Care and Nathan Hospital and add additional counties and services. This amends and supersedes an earlier CON application Number 241119. With that, the department is recommending approval with a condition.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr. Torres.

**Ms. Baniak** Good morning. Lynn Baniak with the department. This application is for Marquis Certified Home Care, LLC, an existing New York limited liability company that operates a certified home health agency to acquire Community Health Center, DBA Community Health Center of St. Mary's Health Care, a not-for-profit corporation. Marquis will continue to operate out of its current office at 1762 Central Avenue, Albany. Upon approval of this application, Community Health Center will dissolve the two operating certificates for their existing CHHA and long-term home health care program, and Marquis will be the surviving CHHA serving the former patients of Community Health center. Marquis is requesting to add two counties, Hamilton and Herkimer counties to their service area, which includes the counties of Albany, Columbia, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington. Marquis currently provides baseline CHHA services, nursing, home health aide, medical social services, medical supplies, equipment and appliances, Nutritional, Occupational Therapy, Speech Language Pathology Therapy and Physical Therapy Services. They are requesting to add the services of audiology, homemaker, housekeeper, personal care and respiratory therapy to their operating certificate. Both the request to add counties and services are to be able to continue the services currently being provided to the patients served by Community Health

Center. The applicant projects a total of 53,396 visits in year one and 67,064 in year three. The applicant has met the character and competency requirements. In addition, the Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. Therefore, the department is recommending approval.

**Mr. Robinson** Questions?

**Ms. Mazzacco** Can you share how many patients are currently on service at Community Health Center? I thought actually that they had previously closed.

**Mr. Robinson** Is the applicant here?

**Mr. Robinson** So before you leave, please sign in.

**Ms. Sciocchetti** I'm Nancy Sciocchetti. I'm the attorney for the applicant Marquis.

**Mr. Robinson** We still need you to sign in before you depart.

**Ms. Sciocchetti** Sorry, I thought I did.

**Mr. Robinson** Yep.

**Ms. Sciocchetti** The numbers, I believe are in the report. CHC did not close. It's currently operating. It's seeking to close as soon as this application is approved. The patients are being serviced in the current location of the CHC office in Johnstown, I believe. Patient services have been steady. Marquis has been consulting with CHC and assisting in the management of the current operations and the intention is that all of the services would stay static, and that Marquis would eventually undertake to run the operations currently run by CHC. It has not closed. It has not dissolved. The office is still open.

**Ms. Mazzacco** Okay, I'm sorry if I missed the number.

**Ms. Mazzacco** Do you happen to know?

**Ms. Sciocchetti** I will look it up in the report. I apologize for not knowing.

**Mr. Robinson** So just so we're clear, by the time we go back to the full council meeting in April, if there's any questions, we'd like answers before that meeting. If you could just follow up and write us a letter to answer the question.

**Ms. Sciocchetti** Absolutely, I'd be happy to do that.

**Ms. Mazzacco** If they've been continuing to actively accept admissions, because that just wasn't my understanding. I was surprised.

**Ms. Sciocchetti** I will confirm that, and I will provide the information in writing.

**Mr. Robinson** The summary in the application says year one caseload of 4,854 patients and year three, 6,096 patients. Is that the question that you're asking?



**Ms. Mazzacco** No, because I read that as being related to Marquis now covering two additional counties that they don't cover today. That data seemed applicable. It's just in being in the Capital Region. Our health system has been under the understanding that CHC hasn't been able to accept referrals. That was why I just assumed they were already closed.

**Ms. Sciocchetti** It's not already closed. I think that those numbers reflect the concept that Marquis will just take over the existing operations of CHC, so the increase in patients is the intention that Marquis will come in and just continue service to those patients.

**Mr. Robinson** It does seem like we would like some numbers around that.

**Ms. Sciocchetti** Absolutely, I will get you those.

**Mr. Robinson** Thank you for those questions.

**Mr. Robinson** Other questions from the committee, either for the department or the applicant?

**Mr. Robinson** Is there anyone from the public wishing to speak on this application?

**Mr. Robinson** Hearing none, call the question.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Any abstentions?

**Mr. Robinson** This is now Establishment and Construction for an Ambulatory Surgery Center. Application 242221B, Ambulatory Surgery Center of Williamsburg in Kings County, noting an interest by Dr. Lim to establish and construct the multi-specialty Ambulatory Surgery Center to be constructed at 1 Mass Path Avenue in Brooklyn. Department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance is the recommendation.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Dr. Torres.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** The Ambulatory Surgery Center of Williamsburg is seeking approval to establish and construct an Article 28 multi-specialty, freestanding Ambulatory Surgery Center in leased space in Brooklyn, Kings County. The center will provide cardiology limited to subcutaneous implementation of loop recorders, artery embolization for fibroids and prostate, pain management, breast surgery, and general surgery in the proposed to operating rooms. CON 2422263, which is also on today's agenda is currently under review

to establish and construct an Article 28 Diagnostic and Treatment Center on the second floor in this same building. The proposed freestanding Ambulatory Surgery Center will be in a separate and distinct space. The services will complement each other, according to the applicant, and create a one-stop location for patients to receive multiple medical services. The proposed operator is the Ambulatory Surgery Center of Williamsburg LLC, whose sole member is Dr. Moustafa Elsheshtawy. Dr. Elsheshtawy and three other doctors have submitted commitment letters to provide services in the center. The applicant is estimating that approximately 85% of the patients who receive surgical services in the physician's office, office-based surgical practice, and approximately 10% of the projected procedures are done in other freestanding ASCs in Queens and New York counties. Those patients live in King's County; therefore, the project will provide a more convenient access to care closer to home. The applicant is projecting about 1,900 procedures by year three with Medicaid at 55% and Charity Care at 2%. The project costs will be funded with equity and a landlord tenant improvement allowance over a ten-year term. The department is recommending approval with contingencies and conditions with an expiration of the operating certificate five years from the date of its issuance.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anyone from the public wishing to speak on this application?

**Mr. Robinson** Hearing none, call the question.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** I'm going to go to the companion application, so it's a little bit out of order.

**Mr. Robinson** This is for Diagnostic and Treatment Center for Establishment and Construction. Application 242263B, this is the Medical Center of Williamsburg in Kings County. Again, an interest by Dr. Lim. Establish and construct the Diagnostic and Treatment Center to be located 1 Mass Avenue in Brooklyn. Department recommending approval with conditions and contingencies.

**Mr. Robinson** Motion, Dr. Berliner.

**Mr. Robinson** Second Dr. Torres.

**Mr. Robinson** Back to you, Ms. Glock.

**Ms. Glock** Thank you.

**Ms. Glock** The Medical Center of Williamsburg is requesting approval to establish and construct this Article 28 Diagnostic and Treatment Center on the second floor of the building on Humboldt Street in Brooklyn. The center would be certified for medical services, primary care and other medical specialties. This is the companion to CON 242221, which we've discussed, which seeks to construct an Article 28 in the same building. For the Diagnostic and Treatment Center, the proposed operator is Dr. Elshasta Wee, and the applicant is projecting 8,500 visits in year three with Medicaid at 46.6%, Charity Care at 2%. The department is recommending approval with conditions and contingencies.

**Mr. Robinson** Questions?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anyone from the public on this application?

**Mr. Robinson** Hearing none, call the question.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Back to regular order.

**Mr. Robinson** This is application 242292E, Crystal Run Ambulatory Surgery Center of Middletown and Orange County. I'll note an interest and a decision to abstain by Dr. Friedrich who will remain in the room. This is to transfer a 40.10% membership interest in the center to eighteen individual physician members. Department is recommending approval with a condition.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Ms. Glock** Crystal Run Ambulatory Surgery Center of Middletown is a multi-specialty, freestanding Ambulatory Surgery Center located in Orange County. It's requesting approval to transfer 40.1% membership interest from Crystal Run Health Care LLP to eighteen individual physician members. Crystal Run currently holds a 50.01% membership interest in the center and will continue to be an owner with a 9.91% membership interest. The center specializes in general surgery, gastroenterology, gynecology, orthopedics, otolaryngology, plastic surgery, and many others. It does not propose adding or changing any services to its potential services offered, or current services offered. The ownership before and after the transfer is shown in your staff report. You can see the eighteen

physicians that will be coming into the membership if approved. They are projecting 16,000 procedures with Medicaid of 14.37% and charity care of 2% by year three. The department is recommending approval with a condition.

**Mr. Robinson** Any questions on this application?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** Good morning. Scott La Rue, member of the council. I know that the ambulatory partner holding is already 49.99% owner, and it will be going forward. Do we know who the members are of that?

**Ms. Glock** I do know that. The members of the ambulatory holding, there are three partners with equal ownership percentage as Class B. Let me see if they're listed.

**Ms. Glock** You'll see it on the bottom of the staff report.

**Mr. Kraut** I have a question for the applicant.

**Mr. Cicero** I'm Frank Cicero, consultant to the applicant.

**Ann**, member of APH.

**Mr. Tomlinson** Daniel Tomlinson, Orthopedic Surgeon.

**Mr. Kraut** I'm just going to pick up a little on what Ms. Monroe was asking questions about quality. And here, just a specific question. You disclosed forty-one lawsuits for the center. None of the individuals were individually named, but the center was named. What is your process in reviewing and assuring quality? I'm not saying there's any merit to these lawsuits. You had to disclose them. The hospitals got sued, everybody that was in the room got sued. This is an opportunity to kind of describe what is your internal process? How often do you have a quality committee? How does it get reported to the board? What's your process on monitoring and assuring quality to the people you serve?

**Mr. Cicero** I just want to say for the record that although that number, and certainly I brought it up in our prep calls, three pages will bring attention.

**Mr. Kraut** A little.

**Mr. Cicero** This entity, it goes back ten years, and this entity at multiple times during the past ten years. It's existed for a long time. Has had as many as 125 physicians in it.

**Mr. Kraut** Well, that's an explanation.

**Ann** Good afternoon all. At all of the ambulatory surgery centers, there is at least a quarterly meeting of the committee's quality infection control peer review whereby all quality measures are reviewed and those in turn are escalated to the Medical Executive Committee and to the board of managers for review in addition to that all lawsuits. All actions in general are reviewed in real time by the peer review committee and the board of managers and followed up accordingly. Additionally, each time at reappointment for all physicians, all lawsuits, all quality indicators are part of that process for membership

practicing at the ASC level and are considered in re-employment of members, whether they are just utilizers and or members of the facility.

**Ann** We are a Joint Commission, Medicare certified state.

**Mr. Kraut** When they come in and survey. Again, this is just stimulated by Ms. Monroe's for everybody's education. Do they come and they'll take a look at your quality and assure that you follow the process you just described?

**Ann** Absolutely, they are. In addition to that, they will also ask for a list of those suits that have occurred as well.

**Mr. Kraut** Thank you.

**Mr. Robinson** Other questions?

**Mr. Robinson** We thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Dr. Friedrich, your abstention is noted.

**Mr. Robinson** Thank you.

**Mr. Kraut** Dr. Friedrich works for United.

**Mr. Robinson** Application 251014E, Atrium Endoscopy in Suffolk County, noting an interest by Mr. Kraut who will remain in the room to establish and construct a single specialty Ambulatory Surgery center for Gastroenterology at 775 Park Avenue in Huntington Station. Department is recommending approval with conditions and contingencies with an exploration of the operating certificate five years from the date of issuance and that is their recommendation.

**Mr. Robinson** Dr. Berliner, motion.

**Mr. Robinson** Dr. Torres second.

**Mr. Robinson** I will note, by the way, Mr. Kraut's interest is in association with a proposed backup agreement between the center and his institution.

**Mr. Robinson** Please go ahead.

**Ms. Glock** Atrium endoscopy management LLC is an existing company LLC. They're requesting approval to establish and construct a single specialty freestanding Ambulatory

Surgery Center that will specialize in Gastroenterology. This project will convert two existing private office-based surgical practices into a single Specialty, Article 28, freestanding Ambulatory Surgery Center with two procedure rooms to be located in Huntington and Suffolk County. The two physician members, Dr. Sisser, who's a board-certified Anesthesiologist and Dr. Zinkin, who is a board-certified Gastroenterologist will be the operators of this ASC. The primary purpose is to bring existing procedures that are being performed in those private office-based practice into the Article 28 regulatory environment. Upon approval, the surgical components of both those private practices will close and those practice but will continue to provide consults and follow-up in pre and post follow- up to the cases. None of these cases are being proposed are coming from local hospitals They're projecting about 2,759 cases by year three with Medicaid at 6%, charity care at 2%. The department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance.

**Mr. Robinson** Questions?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anyone from the public wishing to speak?

**Mr. Robinson** Hearing none, call the question.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Just making this as an announcement, I guess. Application 231143E, Western Regional Health Corporation doing businesses Willcare in Erie County. That application has been deferred at the applicant's request. Application 231144E, Litson Certified Care Inc doing business as Willcare in Orange County has also been deferred at the applicant's request.

**Mr. Robinson** Moving on to applications for residential health care facilities and establishment. The first is Application 231220E, CLRNC Operating LLC doing businesses Clinton County Nursing Home in Clinton County. This is to establish CLRNC Operating LLC as the new operator of Clinton County Nursing Home, which is an eighty-bed residential health care facility currently operated by Clinton County at 16 Flynn Avenue in Plattsburgh. The department is recommending approval with a condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Mr. Robinson** That goes to you, Ms. Baniak?

**Ms. Baniak** Yes.

**Mr. Robinson** Thank you.

**Ms. Baniak** Clinton County Nursing Home is an existing eighty bed residential health care facility located in Clinton County. The current operator of the facility is Clinton County. This application is for the establishment of CLRNC Operating LLC doing business as Clinton County Nursing Home as the new operator. Upon approval, the facility will be named Clinton Rehabilitation and Nursing Center. The membership for the proposed operator is Lisa Kaplowitz at 50% and Israel Ostrovitzky at 50 percent membership. The applicants are also under review for CON 232241, which is a change of ownership application for Wells Nursing Home Inc, which is also on this agenda. On February 7th, 2023, the County of Clinton entered into an Operations Transfer and Surrender Agreement with CLRNC, which was amended on September 11th, 2024. There was no purchase price for the operations. Concurrently, the County of Clinton entered into a contract of sale with CLRNC Realty for \$5,500,000 initially, which was amended on September 19th, 2024, for the reduced purchase price of \$2 million. The \$2,000,000 will be funded with \$500,000 in members' equity and a \$1,500,00 fixed rate loan for five years with a five-year option at 8% advertised over twenty-five years. Ephraim Zagelbaum has provided an affidavit stating the willingness to contribute resources disproportionate to ownership interests to cover any equity shortfall. The applicant will lease the premises from CLRNC Realty LLC through a non-arm's length agreement. There will be no changes to beds or services as a result of this application. Based on weekly census data, the facility reported that 53.8% of their eighty licensed beds are staffed and 47.5 occupied as of February 5th, 2025, for an 88.4% occupancy of staffed beds. According to the applicant, the decrease in occupancy during 2022 and 2023 is due to the facility putting a hold on new admissions related to staffing issues and focusing on selling the facility. They have provided information on how they intend to increase staffing and occupancy, which was included in the exhibit. A review was conducted to ensure that the applicants had adequate relevant experience. Lisa Kaplowitz has been the corporate Director of Clinical Services at Personal Healthcare since September 2017 and oversees twenty-one facilities in that role. Previously, Lisa was a regional nurse at Personal Health Care from December 2011 to September 2017, and Director of Nursing Services at Terry Town Hall Care Center from April 2006 to December 2011. Israel Ostrovitzky has been the Controller at Personal Healthcare since July of 2012 and oversees twenty-one facilities in that role. The applicant has met the character and competence requirements. In addition, the Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Mr. Robinson** Mr. Lawrence.

**Mr. Lawrence** Could you clarify exactly what is meant by a non-arm's length agreement that the applicant will be leasing the premises on?

**Mr. Evans** Hi. This is Ken Evans with the department. Non-arm's length agreement means there's generally a relationship between the two parties.

**Mr. Lawrence** In that situation, do you do a market assessment of the raised value of the lease?

**Mr. Evans** I'm sorry. Could you repeat the question?

**Mr. Lawrence** Do you do market assessment of the value of the lease that's in question?

**Mr. Evans** Yes, we get two rent reasonableness letters.

**Mr. Lawrence** Pardon?

**Mr. Evans** We get two rent reasonableness letters to ensure that the rent is reasonable from a licensed real estate entity.

**Mr. Lawrence** Is that the equivalent of an evaluation of the lease?

**Mr. Evans** Yes.

**Mr. Robinson** Other questions?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** Good morning. Scott La Rue, member of the council. My first questions are about the finances of this project, meaning the operating finances that were put in the application. The facility is currently at a 53% census because they stopped admissions. They have a case mix, I think, of 0.087, which is, I'm not sure if the department knows what the default case mix is. At some point, it's so low that you get a default case mix. Let's assume it's close to the 0.087. It's currently lost \$4.4 million, both in the year before they stopped admissions and in the most recent year. Yet in the Performa, it shows that the facility is going to only lose a miniscule amount of money in year one. It's actually going to have a profit in year two. That doesn't make sense to me. I'm not sure how that happened. Should that be a question for the applicant or the department who did the financial review?

**Mr. Robinson** Why don't we have the applicant come up and maybe it's a combination.

**Mr. La Rue** If you look at the whole financial picture, I find it difficult that an eighty-bed nursing home under any circumstances that has a Medicaid payer mix of 75% can make money or break even under any circumstance. Assuming that you're running a 75% Medicaid mix, you've got a facility that's half full and you're going to have a ramp up to get it back to capacity. You have a case mix of 0.087. I'd like to know how that formula works and add in the 3.5 staffing requirement of PPD. I'm not sure how you're not losing millions of dollars.

**Mr. Cicero** I don't know if the department wants to answer that first, but we're prepared to speak.

**Mr. Evans** Well, we can do it together collaboratively if you want.



**Mr. Evans** We evaluated the budget that was submitted. We looked at it. We vetted the numbers. They have a robust plan in order to ramp up basically the census. This is what was presented to us.

**Mr. Cicero** Mr. La Rue, certainly there has to be a change in the payer mix, without question, as they go forward. There is an intention, and it's discussed in here. The folks to the left and right of me have experience with other facilities in assisting them to improve their case mix. They'll have to compete for that within the county. That's part of the assumption. This facility, the county is here to speak to it, if anyone from the council or the department likes. This facility has struggled for many years. There is a plan, as Mr. Evans has said, as we've presented, to improve the utilization of the facility by allowing admissions again is the first thing. It is staffed already to accept additional admissions without having to bring any additional staff on. With respect to the expense side of it, as you can see, the current benefit percentage is over 54%. That's not sustainable. The applicant and the county have worked with the current union, which is CSEA. The union is in favor of this project. The staff wants to continue working in this facility. It is expected that they will re-unionize. The benefit percentage can't be the same and keep it open. You're 100% correct. that it would not be a sustainable budget. Those are the things that have been done in presenting the application to the department.

**Mr. La Rue** The employees are going to take a haircut on their benefits and wages, and that's something that's already been negotiated with them.

**Mr. Cicero** It has certainly been discussed with the union. Again, the county, I think, can come up and speak to that fact. The budget that's in the staff report demonstrates the difference. A part of the savings that will turn this around will be on the benefit line. Although, I should also say that there is an expected increase in wages for the staff that partially offsets that.

**Mr. La Rue** When you talk about the payer mix, the application makes a commitment, if I'm not mistaken, to a 75% Medicaid. If you took a 75% Medicaid and a 25% Medicare, this still does not work financially.

**Mr. Cicero** With the numbers that are in front of us here, it is feasible.

**Mr. La Rue** There's no way they work. If someone laid out a staffing plan at 3.5 hours and put your case mix in, your current Medicaid rate, and the 75/25 payer mix, I would like to see a financial analysis that shows me that facility breaks even.

**Mr. Cicero** It meets the requirements for the current staffing ratios that were passed several years ago. The case mix will increase. That's a part of the projections that are in this staff report.

**Mr. La Rue** Except the case mix is currently frozen. It can't increase. You need working capital to plug that hole while you're ramping up the census. Let's put that aside for a second. I'd like to ask the department. We really should have a little work group and talk about how we're looking at the financial analysis of these homes, because if there is a regulation that says that it's supposed to be 3.5, and they have to meet 75% Medicaid. I think it's pretty straightforward to figure out whether that math works, or it doesn't work. I have not seen an eighty-bed facility that could make those numbers work.

**Mr. Robinson** By the way, is the conversation on payer mix or case mix?

**Mr. La Rue** It's all the same.

**Mr. Kraut** I just want to respond to I think what you just said before you continue. You raise a valid point. Just putting aside, the consideration of the application in a minute. What we heard you say, you accepted the assumptions. What I think Mr. La Rue is saying, maybe we need a different process in reviewing nursing home applications. This is this application, the companion application. We're seeing the movement of more not-for-profit or government owned entities into the for-profit realm and that's part of the challenge under the economics of operating a nursing home successfully as a not-for-profit or frankly as a for-profit. Just to put your comment and not to lose track of its Colleen, maybe we do sit down with the department. What is the type of financial challenge or modeling that you would expect the department to do when they bring in application, maybe to lay out the assumptions a little more clearly and for some testing of those assumptions against some benchmarked stuff. Let's just not lose sight of that. I just wanted to put that in a garage for a moment.

**Mr. La Rue** Thank you.

**Mr. La Rue** My second question is---

**Mr. Cicero** Mr. La Rue.

**Mr. La Rue** Yes.

**Mr. Cicero** I just want to close off the first point. If I could just say, based on the staff report and the budget presented, the Medicaid percentage, you're 100% correct. It is at 75%, but that's a reduction from 95% today and Medicare and private pay go up concomitantly so that there is an expectation of, at least on the Medicare side of a higher acuity patient that has not been accepted at this facility for a couple years, and that will lead to better reimbursement, at least on the Medicare side.

**Mr. La Rue** Mr. Cicero, if you'd like to prepare a document for me before the next meeting of the full council showing me staffing at 3.5.87 case mix, your current Medicaid rate in a 75/25 payer mix with the wages that are being paid, I'd love to see it.

**Mr. Cicero** We can do that. It's in front of the department today.

**Mr. La Rue** The second thing I want to ask, and first I want to make a general comment. There's a theme on all of these nursing home applications today. We passed or we agreed upon certain criteria for character and competency. That included, whether it's flawed or not flawed, some retrospective review of quality ratings, et cetera. There was also a lot of discussion about ownership and who owns the land and who owns that nursing home, etc. We went through a very lengthy period of no nursing home applications. Today's the first day we have a number of nursing home applications. One of the themes that I see across these applications is we suddenly have a bunch of individuals who've never owned nursing homes before, have no experience in owning a nursing home and are acquiring a nursing home operation with little or no equity and have a tangential relationship to a third party who has a very long history of operating nursing homes and suddenly they're in the background. We have new individuals taking ownership of the home. My concern here is you create a set of criteria and rules. Naturally, people are going to develop a path to work their way around them. My concern here is that's exactly what's happening with these

nursing home applications is the true operators of the nursing home are not being reflected in these applications. I saw the financial analysis of the individuals buying the land. Again, my comments are on almost all of these nursing home applications today with a few exceptions. I didn't see a financial analysis on the individual who is allegedly the two individuals, the operators and the owners of the operations of the facility. It might be in there somewhere. That's a concern of mine that I think we also have to look at is there something happening here in terms of a way to avoid what we established as the character and competency review by doing it this way now.

**Mr. Kraut** I think I want to take that and ask a very directed question. You're right in many points. Obviously, given a lot of activity, both the department and the Attorney General in the nursing home ownership. The issue then we're confronted with given the character and competence. If we only limit ourselves to people who existingly own and operate nursing homes, it's kind of a revolving door of the same individual. The question here, and here we have an opportunity where I'm going to ask the applicant. We have to, I think somewhat be open for consideration of an individual who probably is qualified to operate and own a nursing home but has not had that opportunity to do it. We may grant that person that opportunity. I mean, that's really the consideration. I'm going to ask Ms. Kaplowitz. I recognize you're recognized as the managing member to kind of talk to that experience because you're ready to own it. There are issues about the connectivity to the ownership group that could not own it. Not only your experience, but also how do you expect to maintain independence to the point Mr. La Rue said of that ownership that we truly could understand. How do you address those kind of concerns that you just heard expressed?

**Mr. Cicero** Thank you, Mr. Kraut.

**Mr. Cicero** Ms. Kaplowitz is very much looking forward to speaking and probably wishing I didn't say anything right now. I would like to say before we start that, just to go back on the history a little bit and to talk about this application. I think the word avoid would not be the right word to say here. Several years ago, a code was passed that reflects if you have ownership of at least five facilities for at least forty-eight months, and your Star ratings are at least 41% or more to or lower, you cannot be approved for character incompetence. In passing that regulation, what wasn't understood, I think, at the time, or at least, and it creates a perverse incentive is that there were a lot of people out there who the department probably thinks are good operators, maybe even folks around this table would think are good operators, but who had taken on troubled facilities from say 2010 to 2020 and have struggled to get them over two Stars. Their names have been spoken here, who would probably be the proposed applicants in this case cannot apply right now. Second, those people, and in this very case, this application came before the council in November 2023. Those individuals reflecting the need to diversify had included spouses and others in their ownership so that there could be a diversification to eliminate the concern about the staff about the Star ratings. Well, in this case, the ombudsperson, and perhaps legitimately so didn't like that application when it came in front of this council in November 2023, because there were spouses of the people who can't apply due to Star rating issues as well as these two people. They were in the application back then in a smaller role. What remained, not to avoid, but what remained was for these two to come forward. Ms. Kaplowitz will speak about her experience and Mr. Ostrovitsky's intentions not to cater to the people that they're employed by. I also think we've worked very cooperatively the last several months with the department. There's an operating agreement in this project that both individuals have signed that has all protections against anyone else being able to come in without PHHPC knowing about it or control this entity. There's a lease that has had the department fine-tooth comb it and eliminate anything that could give the landlord

control over the finances of this entity, and they have even signed, not required to, but something most folks would not know about 620.1B Affidavits to make sure that everyone knows under penalty of perjury that the economics will be for them as well and not for anyone else. We've tried to make this arrangement as best as can be given the real constraints of a code, et cetera. All in the context, the most important thing here is this facility continuing to operate after 150 years. It won't if this doesn't go through, and the county is here to say that if it needs to be said. Let me stop talking and turn it over to the person who's important here. Thank you.

**Ms. Kaplowitz** Thank you.

**Ms. Kaplowitz** I've worked in the skilled nursing facility industry for over twenty years. I have a background in nursing; however, I have a lot of knowledge in general operations of other departments within the facility. As an owner and an operator of Clinton County, I understand that my primary responsibility would be to the safety, quality of care, and the operational integrity of the facility. I also understand the difference between working as an operator and working as a consultant. My primary obligation would be to the residents and the staff that work under my direct oversight in accordance with the legal documents that I signed. I am fortunate that I work with an organization that understands this difference as well. It has the flexibility of staffing that would allow me to focus my time and efforts with Clinton County and my role as a new operator.

**Mr. Kraut** I understand you made reference, and you said there's a representative from Clinton County. As an avid reader of the Plattsburgh Press and the Sun, I think they made it pretty clear that if you don't approve this, they close the nursing home. What can we do? Let's say we are predisposed to approve it, but there's concern because not so much you're untested. I read your background. You have a long history in this. This is an opportunity. You're a new operator for not only this home, but yet a second one you're asking us to approve. Our interest is access, patient safety financial, to keep this viable. We hope you are immensely successful in turning this around. What would you suggest would give us greater assurance as far as how the state comes in in surveys, the ombudsmen there. What other things could be done just to maybe that you will find acceptable if we have any questions about just to keep an eye on it? What would you suggest that we do?

**Ms. Kaplowitz** Well, I think that you can review the findings of the regulatory surveys that are taking place while I'm an operator. You can communicate with the ombudsman who visits frequently and is involved.

**Mr. Kraut** How often does the ombudsman appear?

**Mr. Kraut** Is the ombudsman here?

**Mr. Kraut** Maybe we can ask you directly afterwards. I think that might give us a little more comfort in it, but I just want to finish the questions for the applicant.

**Mr. Cicero** Mr. Kraut, I just want to make it clear that through these two individuals next to me, during the course of this review, we've reflected to the department that if there is to be additional reporting of any type, they are amenable to that.

**Mr. Lawrence** I have just a pretty simple question, and it's for the staff. I'm looking at the enforcement's history. I note in 2020, there was a fine for \$12,000 over the facility failed to

ensure that the alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the Department of Health. How does the staff evaluate these enforcement history? Where is that found? Is that part of character and confidence? How do you arrive at a decision when you look at this enforcement history? What weight does that have in the process?

**Ms. Baniak** It is part of character and competency. In this instance, they are not owners. We provided informational information to you on the history of the facilities that they are employees at just for your information in making this decision. Because they are now owners of those facilities, that is not taken into consideration as far as their character and competence.

**Mr. Lawrence** In what capacity is this being provided? Maybe I'm misreading this.

**Ms. Baniak** It's informational purposes for the PHHPC members only.

**Mr. Lawrence** About?

**Ms. Baniak** The facilities that they're employed.

**Ms. Baniak** Right, the facilities that they're employed at.

**Mr. Lawrence** If they are employed at the facility and they've had a \$12,000 fine for some shortcoming that does not in any way reflect on their conduct, professionalism?

**Ms. Baniak** They are not responsible as an owner would be responsible for those issues. That's why it's provided to you as information that you can take into consideration, but it isn't something that we could have said they didn't pass character and competency on.

**Mr. Lawrence** Does it go to the question? We've heard a lot of discussion about quality. Is that a reflection of their ability to deliver high quality care in whatever facility that they might be managing?

**Ms. Baniak** It might be good to direct the question to them on what they feel they can do to work on the quality issues.

**Mr. Lawrence** I guess what I'm trying to get at is how is that evaluated? I understand you're putting it before the council, but is that factored into your analysis and your recommendation?

**Ms. Baniak** If they were owners, then yes, it would have been part of our character and competency review. It would've been a part of our decision. Because they are not owners of these facilities that are listed it's not something that we would say would prohibit them from becoming owners. Does that make sense?

**Mr. Lawrence** Thank you.

**Mr. Cicero** Dr. Berliner and then Ms. Monroe.

**Dr. Berliner** Given the shaky financial situation that the institution is currently in and what appears to be the desire of the county to shed all obligations to the facility. If that's not correct, please correct me. My question is really about... It seems quite likely that there will

be cuts to Medicaid funding, nationally at least, and that will particularly affect the skilled nursing facility industry. What are your expectations? How do you intend to deal with any such cuts to your funding given Mr. La Rue's points about already a somewhat tenuous ability to kind of make financially?

**Mr. Cicero** Well, I'll let Mr. Ostrovitzky speak generally as a financial person on it. It hasn't been incorporated into the review of this application yet. I don't think anyone knows for certain what it'll be. It's certainly not something anyone's looking forward to, but neither person here has indicated that they're backing away from this or the other transaction.

**Mr. Robinson** Ms. Monroe.

**Ms. Monroe** I want to just take a step back. In my experience, when a not-for-profit moves into the for-profit sector... There's a lot of looking that goes on to make sure the not-for-profit is not disadvantaged in that relationship. That's happened with everything from the big health plans in the state that have moved from not-for-profit to for-profit. Not with hospitals in New York, but it's certainly in other places. I'm trying to understand the board. There must have been a board of the not-for-profit. They have agreed to give you guys the home or the operations of the home and dealt only with financing for the building. Is that an accurate representation?

**Mr. Cicero** Ms. Monroe, the county is here. I think they should speak to that.

**Ms. Monroe** The county is the operator of the nursing home, which is not-for-profit.

**Mr. Cicero** It's a public. Its government operated.

**Ms. Monroe** Well, it says it's a not for profit. They have, in essence, as I said, not sold it, because there wasn't a financial transaction for the home itself, only for the land. Is that correct?

**Mr. Cicero** The financial transaction is for the building and the land. There is no price, no fee for the operations.

**Ms. Monroe** That was my question.

**Mr. Cicero** That's correct.

**Ms. Monroe** I'm interested to know if they looked at other potential operators? Why this was the deal that made sense to them? I just want to understand that process.

**Mr. Kraut** There's a report that was done many years ago why county-owned nursing homes are divesting. This is consistent with a trend.

**Mr. Robinson** I'd like to ask the county to come forward, and also because I know we have questions for you, the ombudsman to come forward. Introduce yourselves and then we'll ask questions as appropriate. The applicant please remains.

**Ms. Royal** I'm Claudette Royal. I'm the State Ombudsman.

**Mr. Robinson** Thank you.

**Ms. Kelleher** Jacqueline M. Kelleher, I'm a county attorney.

**Mr. Robinson** Thank you.

**Mr. Kraut** Michael, just bring that maybe closer to you when you respond.

**Mr. Robinson** Let's start with the county and Ms. Monroe's question. If you need her to repeat it, she can.

**Ms. Monroe** Well, let me clarify it a bit.

**Mr. Robinson** Process by which you decided on this?

**Ms. Monroe** As the county and the... I don't know if you want to call it parent/owner of the facility, you had an obligation to get the absolute best deal you could get for your asset and made sure the quality services would be there. I'm asking how you did that, who else you considered, and why this group is the group that you chose to take over this facility?

**Applicant** Certainly, I can attempt to speak to that. The county went through what I would call a robust request for qualifications to sell its nursing home asset. We received, I believe, three responsive bids. I will tell you with 100% certainty that the bid that ended up before the committee today would have been the choice of the county legislature, regardless of the financial considerations in that application. They were above and beyond the two other applicants. In fact, my board has indicated or did indicate at the time that they would have not even considered a transfer or a sale to one of the respondents. We went out. We did a due diligence on each of the respondents. Again, I will say that the applicant that's sitting before the committee today was by and for the preferred applicant.

**Mr. Kraut** What's the population of Clinton County?

**Applicant** Just over seventy-eight thousand.

**Mr. Kraut** How many other nursing homes are there?

**Applicant** We have four nursing homes within the county limit.

**Mr. Kraut** if this application wasn't approved what would happen?

**Applicant** Quite frankly, there's no plan B. Long-term viability is extremely suspect should this not be successful.

**Ms. Monroe** I'm satisfied with the process you went through, as unsatisfying as it was in terms of having this home that you needed to dispose of, I understand it. You're telling me you did what was in the best interests of the people of the county, which is your responsibility.

**Applicant** 100%

**Dr. Kalkut** Hi. Gary Kalkut. This is for the municipal. The staff report calls out the contract of sale in September of 2024. A week after the initial contract of sale was entered into, the price for the land and the building was reduced by more than half. To the limits of what you can say here, tell us about that.

**Ms. Kelleher** Actually, the agreement of sale was initially entered into in February of 2023. The bid came in at a combination that totaled \$5.5 million. Looking at the financial analysis and the length of time that it has taken to come through this process, the market for nursing home sales from not-for-profits and counties to private individuals has tanked. We were faced with a prospect that they could not make the numbers work with the initial bid. We're looking at comparable nursing homes that were not getting any bids at all when they were being offered for sale as a not-for-profit. We did agree to reduce the purchase price after fourteen months by \$3.5 million.

**Dr. Kalkut** Right, and it may not be consequential here, but the February 2023 agreement and transfers, operations transfer, and surrender was with the operating company, the sale in September 2024.

**Ms. Kelleher** It was in September 2024 that we reduced the purchase price, amended the agreement for the real estate arm and reduced the purchase price.

**Ms. Mazzacco** I have one question either for the council or the department and one for the applicant. For the department, I thought in prior transactions related to nursing homes transferring from not-for-profit to for-profit that the Attorney General came to the meeting to present. Is that true? We had that at a prior meeting.

**Mr. Kraut** Deferred to the department, but no.

**Ms. Kelleher** The county is not not-for-profit. It's a municipal agency.

**Ms. Mazzacco** That might be the difference.

**Ms. Mazzacco** My second question is when other not-for-profits have been faced with similar financial challenges, they've also evaluated the option of closure. Some have chosen the option of closure because the options available to them were not acceptable. Can you speak to whether or not that was an option you considered? When I'm looking at the application, there's another nursing home in the county with the equivalent of fifty-two beds vacant. At your occupancy rate, you're at thirty-eight beds. It would seem as if there was existing capacity in the county, which may have strengthened one of the other nursing homes there. Did you look at that option?

**Ms. Kelleher** We have been advised by regulatory council that we are limited in discussing what certain plans might be in public in front of this board at this time. I think to Mr. La Rue's point losing four million dollars per year is not sustainable.

**Applicant** I will also add, it's been said today, that Clinton County has been in the nursing home business for well over one-hundred years, about fifty years at its current facility. To speak to your question, we take great pride or have taken great pride in being a nursing home operator in years past of last resort. We feel that was an obligation. It's just at this point in this fiscal environment we're literally running out of resources to continue that operation in its current capacity.

**Mr. Kraut** I want to ask the ombudsman, but if you have for the applicant.

**Mr. La Rue** I just had a couple of final comments. Really, the comments I've made here for both applications because there's two. I just want to be clear. I've made two points. One is



about the process and how the application is put together as it relates to avoiding character and competency of who's actually or actually not running the nursing home. That's one of my concerns. It's true of others. You'll notice there's a whole bunch of folks here with zero homes to compare performance to. They only have homes with less than forty-eight. I'm taking the assumption that's not an accident. That's my first concern. My second concern is the financial viability of the homes. The nursing homes are in an absolute crisis. This is a reflection of it. If the Medicaid reimbursement rates were sufficient, I assume the county wouldn't have even gone to sell their homes. To ask the council to approve this because there are no other alternatives in the county, I don't think it's appropriate. I, for one, will not approve either of these applications for all the reasons I just listed. If we want to solve the problem with nursing homes in New York State, fund the damn Medicaid program and we wouldn't be having this discussion.

**Dr. Lim** Hi. Sabina Lim. I have a couple of questions for Ms. Kaplowitz. You have been with Personal Health Care as a corporate Director of Clinical Services since 2017 or so. I know you are not the owner and operator of those twenty-one facilities. Could you describe in more detail what your role was in assuring clinical quality and safety at those sites?

**Ms. Kaplowitz** I was a consultant to the facilities. I was not an employee of any of those facilities. My role as the consultant was to do a comprehensive assessment of the clinical outcomes, evaluate systems, risk management. I was very involved. I had a regional nurse at these sites as well with me. I collaborated with the clinical department, including the Director of Nursing. We're very involved doing the copy and monitoring and reviewing the outcomes. Ensuring that we were very proactive, instead of reactive. Ensuring that these residents had the highest quality of care. That's my priority. I've gone into this field because I wanted to care for residents.

**Dr. Lim** In that role, so now for this facility, now you're going to be the owner and operator. I'm sure you've had a chance to, at least at a high level, see what the processes and structures that are in place to assure quality and basic safety and regulatory readiness. Can you share with us sort of what your thoughts are about what are the structures and processes that you would put into place to ensure that in this facility now that you will own, basically?

**Ms. Kaplowitz** My approach is going to be utilizing the electronic medical record system that we have and implement additional software that provides live time analysis so we can monitor and evaluate what is going on. Also, being visible in the facility. I'm very familiar with this community. I actually was born and raised in both of these communities. I moved out of the area almost twenty-five years ago. I have an invested interest in both of these areas. I know people. I have family that lives in these areas. My parents live in these area. I have brothers. Being visible, being on site, working with the leadership in the facilities, ensuring that systems are in place to prevent any negative outcomes, being proactive with risk management, ensuring that I'm a support. I see what's going on the facility. I know regulatory compliance probably better than most. They were postponed a couple times. They're supposed to be coming out effective April 2024. Nine hundred and seventeen pages of that state operations, I know it. I've got my policies. I've prepared them. I've worked with my team. We've already implemented them. We audit, auditing systems to evaluate and ensure that they are working. If they are not, we do a root cause analysis into why to understand instead of just fixing the issue, understand why it's not working, reevaluating and ensuring that we have something that works for the facility.

**Dr. Lim** You'll bring your expertise particularly in that realm and create the structures and the processes and policies.

**Ms. Kaplowitz** Yes.

**Dr. Lim** Then may I ask, will you be continuing in your current employment at personal health care, or will you have devoted 100% to this?

**Ms. Kaplowitz** I will still be a support for those other facilities. I'm in a situation that the organization understands my obligation and responsibility and has staffing flexibility. I can make sure that I'm in my role as an operator in these facilities. Other staff can be allocated to ensure that the other facilities are being managed and properly assisted.

**Mr. Kraut** Ms. Royal, I'm going to just address a question to you. First, to the point that Mr. La Rue said, I can't argue with anything about the funding. We have to play the cards we're dealt. These are the situation we have. What you said, we need to go across the street and sit in the well of the legislature to be heard, because you're obviously not wrong. You'll have a lot of people joining you. I would suggest this as part of, to just get us to closure and to call a vote, is Ms. Royal. You gave us a letter on this application and the companion one that has reviewed the activities of the eighteen facilities where you have fairly frequent activity. You noted in that review of these two individuals where they're active that they have made efforts and positive efforts to implement changes which has generated some positive improvements. Given the fact that if these two individuals are approved, how often do you visit? For this particular application to make sure that there's a kind of a monitor, an independent monitoring to make sure that issues of patient care and safety. It would give me greater comfort in supporting this application, knowing they had a more active role. I don't know how frequently you visit. I'd ask that question. What could you do to help us assure ourselves that if we do vote to support this application there's some monitoring here. That's it. That's what I'm suggesting.

**Ms. Royal** Sure.

**Ms. Royal** This particular facility, Clinton County happens to have an extraordinary presence there. The region where this is has great coverage. They're there at least weekly, probably more frequently. Knowing that this has been coming down the line, my coordinator in that region has been monitoring that facility more as well, talking with the residents, having an increased presence. I completely expect that she will be there more frequently if this application is approved. I can assure you that if there are concerns, absolutely we will be raising them, addressing them with the ownership, with the administration, and if needed, elevating it to the Department of Health if we're seeing issues.

**Mr. Kraut** Thank you so much.

**Ms. Monroe** Thank you.

**Ms. Monroe** I'm sure that the county and the folks who've been in charge of the nursing home will do everything they can to make this be the best decision in terms of having it work out. I just have a couple basic questions. They're math questions. I looked at the budget that the department gave us. It is exactly the to the penny, year one and year three. I don't even know how that's possible. It says to me that those numbers may not have been based on history and projection and rather just plugged in. The second is that,

as Scott La Rue said, and we've seen, you're taking on a nursing home that's lost a significant amount of money. You're going to go in. It's going to take time for you to do all the good things that you're talking about doing. I don't understand where your working capital is going to come from.

**Mr. Kraut** They're not the same.

**Ms. Monroe** The two of you are not putting money in. Where, when you have losses the first six months, eight months... How are you going to cover those losses?

**Mr. Robinson** Ms. Monroe, the budget, the rates are the same. They're required to be held the same from year one to year three.

**Ms. Monroe** Pardon me, say that again.

**Mr. Cicero** The rates are the same from year one to year three. They're required to be held the same in current year 2025 dollars, but the budget itself is different.

**Mr. Kraut** What page, Ann?

**Ms. Monroe** I'm on Page 2.

**Mr. Kraut** I'll let the department.

**Ms. Monroe** I mean, they're exactly the same on Page 2.

**Mr. Kraut** No, but if you look at the bottom of the budget.

**Ms. Monroe** I know your budget is not going to look exactly the same year one and year three. I wondered about that. I'm more interested in working capital.

**Mr. Cicero** Working capital, these individuals are putting forth some of their resources. Sorry, I'm not hitting the mic properly. These individual are putting forward some of their own resources. They also have loans from the other individuals we've discussed before at market rate, interest rates that they will have to pay back.

**Ms. Monroe** That's included in here somewhere?

**Mr. Cicero** Yes, it is.

**Ms. Monroe** Then I apologize, because I read a lot, but I didn't see that.

**Mr. Cicero** Understood.

**Mr. Robinson** Well, I think what we're going to do, you guys stay there because we've got another application.

**Mr. Robinson** Is there anyone from the public that wishes to speak on this application?

**Mr. Robinson** I'm going to call the question on this one. We'll see how we proceed once we have the vote.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Opposed?

**Mr. Robinson** Two in opposition.

**Mr. Robinson** Any abstentions?

**Ms. Monroe** I'm abstaining.

**Mr. Robinson** The motion does carry. It will go forward to the council.

**Mr. Robinson** Thank you.

**Mr. Kraut** No, she just said she abstained.

**Mr. Robinson** I got that.

**Mr. Robinson** Let me just suggest the Clinton County folks and others given the conversation we had here. I just can't predict how the conversation is going to go with the full council. I would suggest that all of you guys show up for full council as well two weeks from now.

**Mr. Robinson** That motion carries.

**Mr. Robinson** I'm now calling application 232241E, WRNC Operating LLC doing business as Wells Rehabilitation Nursing Center in Fulton County establishing WRNC Operating LLC as the new operator of Wells Rehabilitation and Nursing Center, a one-hundred bed residential health care facility currently operated by Wells Nursing Home Inc at 201 West Madison Avenue in Johnson. Department recommending approval with conditions and contingencies.

**Mr. Robinson** Motion, Dr. Berliner.

**Mr. Robinson** Second Dr. Torres.

**Mr. Robinson** Ms. Baniak.

**Ms. Baniak** Wells Nursing Home is an existing one-hundred bed residential healthcare facility with a twenty-two-slot adult day healthcare program located in Fulton County. The current operator of the facility is Wells Nursing home Inc, which is a not-for-profit corporation. This application is for the establishment of WRNC Operating LLC doing business as Wells Rehabilitation and Nursing Center as the new operator. The membership for the proposed operator is Lisa Kaplowitz at 50% and Israel Ostrowiczki at 50% membership. The applicants are also under review for CON231220, which is a change of ownership application for Clinton County Nursing Home, which was just previously presented. On May 7th, 2023, Wells Nursing Home Inc entered into an operations transfer and privatization agreement with WRNC Operating LLC for the acquisition of the RHCF's operations and certain other assets with no purchase price for the Acquisition of Operations. Concurrently on May 17th, 2023, Wells Nursing Home Inc

and WRNC Realty LLC entered into a contract of sale for the sale and acquisition of the RHCF's real estate for a purchase price of seven million. The seven million will be funded with equity of one million seven hundred and fifty thousand from the proposed realty members and a loan of \$5,250,000 at eight-point five percent interest for a five-year term and a payout period of twenty-five years. Efraim Zagelbaum has provided an affidavit indicating willingness to cover the balloon payment if refinancing is not available after the five- year term. The applicant will lease the premises from WRNC Realty LLC through a non-arm's length agreement. There will be no changes to beds or services as a result of this application. Based on weekly census data, the facility reported that 90% of their one-hundred licensed beds are staffed and 88% occupied as of February 5th, 2025, for a 97.8% occupancy of staffed beds. A review was conducted to ensure that the applicants had adequate relevant experience. Lisa Kaplowitz has been the Corporate Director of Clinical Services at Personal Health Care since September 2017 and oversees twenty-one facilities in that role. Previously Lisa was regional nurse at Personal Health Care from December 2011 to September 2017 and Director of Nursing Services at Tarrytown Hall Care Center from April 2006 to December 2011. Israel Ostrovitzky has been the Controller at Personal Health Care since July of 2012 and oversees twenty-one facilities in that role. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. Based on this, the department is recommending contingent approval.

**Mr. Robinson** Mr. La Rue, I'll just call right on you now so that I don't have to have you wait.

**Mr. La Rue** Not necessary, I have no further comments. All my comments from this first application carry forward to this one.

**Mr. Robinson** Just wanted to make sure that you had the opportunity to say just that.

**Mr. La Rue** Thank you.

**Mr. Robinson** You're welcome.

**Mr. Robinson** Other questions or comments?

**Mr. Robinson** I mean, I think we're on a parallel track here, except that this is a full not-for-profit rather than a municipal to for-profit transaction, but other than that I think we're dealing with the same set of issues, I believe.

**Mr. Robinson** I'll give the ombudsman a chance to make any comments that you would like to make.

**Ms. Royal** Wells House is actually in my home community. I know that facility very well. We don't have as much of a presence in that facility from the ombudsman program as we do in Clinton County Nursing Home, but I will be requiring the program to visit there more frequently if this application is approved. Historically, Wells House has had a pretty good reputation in my community.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** I'm assuming that you're here for questions only on this one.

**Mr. Robinson** I'll call the question then.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** One, Mr. La Rue.

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Two opposed.

**Mr. Robinson** Ms. Monroe, an abstention.

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you all for your being up there.

**Mr. Robinson** As I mentioned to the Clinton County people, I think we would love to have you back at full council just in case there are further questions that come up. Actually, Madam Ombudsman, if you could also be present at full council that would be helpful.

**Mr. Robinson** Application 202251E, Hoosick Falls Center LLC doing business as Hoosick Falls Rehabilitation and Nursing Center. This is in Rensselaer County establishing Hoosick Falls Center LLC as the new operator of the Center for Nursing and Rehabilitation of Hoosick Falls, an existing eighty-two bed residential health care facility located at 21 Danforth Street Hoosick Falls. Department recommends approval with a condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Ms. Baniak** The Center for Nursing and Rehabilitation at Hoosick Falls is an eighty-two-bed residential health care facility in Rensselaer County, which is currently operated by Hoosick Falls Health Center Inc, a not-for-profit entity whose co-operator and sole member is SVHC Hoosick Falls LLC. SVHC Hoosick Falls LLC has a passive parent, Southwestern Vermont Health Care corporation. The membership of the proposed new operator Hoosick Falls Center LLC doing business as the Center for Nursing and Rehabilitation at Hoosick Falls is Mordegi Salomon at 65%, Ariel Jaffa at 12%, Penny Morgan at 12%, Yehudis Klein at 5%, Blimey Perlstein at 5% and Stephen Bernier at 1%. On March 13th, 2024, Hoosick Falls Health Center Inc entered into an operations transfer agreement with Hoosick Falls Center LLC to sell and acquire the RHCF operating assets for \$250,000 plus the assumption of certain liabilities to be determined at closing. Concurrently, Hoosick Falls Health Center Inc. entered into a real estate purchase agreement with Hoosick Propco LLC to sell and acquire the real property for \$2,250,000. The \$2, 250,000 will be funded

with \$450,000 in members equity and a self-amortizing ten-year 1,800,000 loan at a ten-year UST plus 250% interest rate. Mortagy Salomon has provided an affidavit stating he will contribute resources disproportionate to his ownership interest. The applicant will lease the premises from Hoosick Propco LLC. Some members of the applicant in realty have common ownership. On April 1st, 2024, Hoosick Consulting LLC entered into an interim consulting services agreement with the present operator, Hoosick Falls Health Center Inc., which will terminate when this application has been approved and the contingencies are satisfied. There will be no changes to beds or services as a result of this application. Based on weekly census data, the facility reported that 85.4% of its eighty-two licensed beds are staffed and occupied as of February 5th, 2025. The applicant has met the character and competence requirements. In addition, the Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** My comments are the same. I'm not going to repeat them for this. Again, on the financial side, it's an eighty-two-bed facility. The next application is 160. It's a different situation. I'm specifically questioning whether an eighty-bed facility under the parameters we discussed is financially feasible under any circumstances. If I draw the committees to Page 8, the Exhibit E. which is the CMS Star rating criteria. To just support what I was saying, look at all the NAs. There is a whole bunch of new ownership. There is no assessment based on any prior history. These applications are suddenly coming forward with that scenario. It makes me question why. For that reason and the financial reason, I won't be supporting this application either.

**Mr. Robinson** I think to the point that Mr. La Rue is making, I do think that there seems to be an escape hatch through which the character and competence issues of the people that are substantively behind the deal are obviously not being considered. While we have new people that may have reasonable qualifications to be new operators. We're not really necessarily questioning that, the real question I think. Are we really getting at the bottom of who's behind the application? Are we looking at it from that standpoint? Obviously, this is now number three today. They all seem to have that common characteristic. There's just an observation back to the department really of is there something else we ought to be doing? Is there's something we ought to add to our process of review given the fact that this new strategy is emerging? We'll look to the department to advise on how that should go. Not for you to answer anything right now or anything like that, but I do think that we've right now raised this issue on three applications. It's obviously got some concerns. I do note that the applicant is up here. I'll continue up on questions either for the department or the applicant from anybody around the table.

**Mr. Robinson** I'm assuming questions only, Mr. Cicero.

**Mr. Robinson** Yes, he said.

**Mr. Robinson** No, he didn't.

**Mr. Robinson** Questions only, right?

**Mr. Cicero** We would like to make a very brief statement relative to what was said just to clarify here versus the past two applications. I'm Frank Cicero, a consultant representing the applicant. This is Mordehuy Michael Salomon, the majority owner. He will speak as well. I would like to say with respect to the ownership, this group has been approved. One of the most recent ones approved back in 2023, was approved to take over a couple facilities, has taken them over, has helped to improve them. There's one person who's not in this application, Mark, Michael's brother. He is contesting a very difficult situation. It looks like it's going to be resolved. He had to come out because the project couldn't move forward if he stayed in the application where the department could not give a positive character and competence on him while he contested that finding. I guess very unique situation that involved a special program. Hoosick Falls is operated by Southwestern Vermont Healthcare. There's a representative here who can speak to this. They've been meeting with the department since before COVID to try to turn this facility over to other individuals. The first two who went through it were not able to pass character and competence. This group came forward, having been approved by council in 2023, and made their proposal. With respect to the budget, I agree an eighty-bed facility is not easy to do. I do believe, again, it's very different this budget than the ones that were just discussed. There is a revenue increase because this is an extremely isolated facility in Rensselaer County. It has the opportunity to keep residents at home who are currently going elsewhere out of the county. The hospital system that operates this for over five years has not been able to put in resources to help this facility thrive. We now will have people who will put in the resources, make the connections, and keep people at home. There is a strong opportunity, both from a case-mix standpoint on the Medicare side and for the overall utilization to improve this facility. Thank you.

**Mr. Robinson** Thank you for the comments.

**Mr. Robinson** Questions of the applicant, the department?

**Mr. Robinson** Hearing none, anyone from the public wishing to speak?

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Opposed?

**Mr. Robinson** Three in opposition; Dr. Torres, Mr. La Rue, and Ms. Mazzocco.

**Mr. Robinson** Get it right, Peter.

**Mr. Robinson** Ms. Monroe, your vote.

**Ms. Monroe** I did vote.

**Mr. Robinson** The motion carries.

**Mr. Robinson** Thank you.



**Mr. Robinson** Application 222053E, VS Servicer at Beacon LLC doing business as Taconic Rehabilitation and Nursing at Beacon in Dutchess County. This is to establish a VS Servicer at Beacon LLC as the new operator of Taconic Rehabilitation and Nursing in Beacon, formerly known as Windgate at Beacon, a 160-bed residential health care facility at 10 Hastings Drive in Beacon. The department recommends approval with a condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr. Torres.

**Ms. Baniak** The next three projects are all related as they involve the same members. Taconic Rehabilitation and Nursing at Beacon, formerly known as Windgate at Beacon is a 160-bed residential healthcare facility, which includes a twenty-bed ventilator-dependent unit. It's located in Dutchess County. In this application, VS Servicer at Beacon LLC, a New York limited liability company requests approval to be established as the new operator of Taconic Rehabilitation and Nursing at Beacon. The facility has been operating under receivership effective July 13th, 2022, with VS Servicer at Beacons LLC as the receiver. The proposed membership of VS Servicers at Beacon LLC is Michael Farbenblum at 80% and Steven Mercurio at 20%. On June 27th, 2022, Wingate at St. Francis LLC entered into an operation transfer agreement with VS Servicer at Beacon LLC for the transfer and acquisition of assets and operations of Taconic Rehabilitation and Nursing at Beacon. The operation transfer agreements include the operating interest of the other two RHCs, which have the same numbers and are also currently being presented to PHHPC members during this agenda. Those are CON 222054, Taconic Rehabilitation and Nursing at Hopewell, and CON 222055, Taconic Rehabilitation and Nursing at Ulster. The purchase price for the operations is \$33.33, which will be met with the proposed members' equity. The landlord, CCP St. Francis 1742 LLC, and the tenant, VS Servicer at Beacon LLC entered into a proposed lease agreement for site control of the facility. The applicant will enter into a consulting and administrative services agreement with the McGuire Group Inc for certain consulting services. Edward Farbenblom is the sole member of the McGuire Group. One of the operator members, Stephen Mercurio is an employee of the Maguire Group. There will be no change to beds or services as a result of this application. Based on weekly census data, the facility reported 94.4% of their 160 licensed beds are staffed and occupied as of February 5th, 2025, for a one hundred percent occupancy of staffed beds. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** Partially just for the understanding of my fellow committee members of why I'm voting differently on this application than I did the previous three. First of all, it's 162 bed facility. It's easy. There's more flexibility to make the finances work. Secondly, there's a ventilator unit in this program which provides enhanced reimbursement under the ventilator program. They've got a shot at it. If I refer to the same exact page as it relates to

the Star Rating Review for the members of this, you'll see the same thing that you've seen in the other applications. There is no review because nobody met the criteria to have the review take place. Again, I don't think that's something we're going to look at. I appreciate the comment you made. I look forward to the discussion. I'm going support this application for the reasons I just expressed.

**Mr. Robinson** Thank you, Mr. La Rue.

**Mr. Robinson** Mr. Holt.

**Mr. Holt** Thank you.

**Mr. Holt** Tom Holt, member of the council. Just a general question for the department with regard to Medicaid access on this and then other applications. There's an indication that the operator is going to be required to come into compliance with the 75%. How is that monitored? What are consequences for noncompliance with that? It seems like once they leave us, they're gone.

**Mr. Robinson** I think that's a question for the department.

**Mr. Holt** How do we monitor compliance with the Medicaid access requirement?

**Ms. Dietz** This is Val Dietz. We'll get back to you on that. I'm sorry I don't have an answer for you right now.

**Mr. Holt** Thanks, Val.

**Mr. Robinson** I think maybe just a general comment at some point when we're discussing the applications at full council just to give Mr. Holt some solace.

**Mr. Robinson** Other questions for the department?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anybody from the public wishing to be heard on this application?

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Looks like a companion, 222054E, VS Servicer at Fishkill LLC doing business as the Taconic Rehabilitation and Nursing at Hopewell in Dutchess County, establishing VS Servicer at Fishkill LLC as the new operator of the Taconic Rehabilitation and Nursing at Hope Well, formerly known as Wingate of Dutchess, a 160-bed residential

health facility at 3 Summit Court in Fishco. Department recommending approval with the condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Ms. Baniak** Taconic Rehabilitation and Nursing at Hopewell, formerly known as Wingate of Dutchess, is a 160-bed residential healthcare facility located in Dutchess County. In this application, VS Servicer at Fishkill LLC, a New York limited liability company, requests approval to be established as the new operator of Taconic Rehabilitation and Nursing at Hopewell. The facility has been operating under receivership effective July 13th, 2022, with VS Servicer at Fishkill LLC as receiver. The proposed membership of VS Servicer at Fishkill LLC is Michael Farbenblom at 80% and Stephen Mercurio at 20%. On June 27th, 2022, Wingate of Dutchess Inc entered into an operation transfer agreement with VS Servicer at Fishkill LLC for the transfer and acquisition of assets and operations of Taconic Rehabilitation and Nursing at Hopewell. As mentioned previously, that operation transfer agreement also includes the operating interest of the two other RHCs. That is the Taconic Rehabilitation Nursing at Beacon and Taconic Rehabilitation and Nursing at Ulster. The purchase price for the operations is \$33.33, which we met with the proposed members' equity. The landlord, CCP Dutchess 1,741 LLC, and the tenant, VS Servicer at Fishkill LLC entered into a proposed lease agreement for the site control of the facility. The applicant will enter into a consulting and administrative services agreement with the McGuire Group. Edward Farbenblum is the sole member of the McGuire Group, and one of the operator members, Steven Mercurio, is an employee of the McGuire Group. There will be no change to beds or services as a result of this application. Based on weekly census data, the facility reported 100% of their 160 licensed beds are staffed and 91.9 percent occupied as of February 5th, 2025, for a 91.9% occupancy of staffed beds. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions for the department?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anybody from the public wishing to speak?

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Our friends from VS Servicer again, Application 222055E, VS Servicers at Ulster LLC doing business as Taconic Rehabilitation and Nursing at Ulster in Ulster County to establish VS Servicer at Ulster LLC is the new operator of the Taconic Rehabilitation and Nursing of Ulster, formerly known as Windgate of Ulster at 1 Wingate Way, Highland. The department recommends approval of the condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Ms. Baniak** Taconic Rehabilitation and Nursing at Ulster, formerly known as Wingate at Ulster is a 120-bed residential healthcare facility located in Ulster County. In this application, VS Servicer at Fishkill LLC, a New York limited liability company requests approval to be established as the new operator of Taconic Rehabilitation and Nursing at Hopewell. The facility has been operating under receivership. I'm sorry, that was the wrong name. It's Taconic Rehabilitation and Nursing at Ulster. The facility has been operating under receivership effective July 13th, 2022, with VS Servicer at Ulster LLC as receiver. The proposed membership is Michael Farbenblum at 80% and Stephen Mercurio at 20%. On June 27th, 2022, Wingate at Ulster Inc entered into an operation transfer agreement with VS Servicer at Ulster LLC for the transfer and acquisition of assets and operations of Taconic Rehabilitation and Nursing at Ulster. The operation transfer agreement includes the two other RHCs, Taconic, Rehabilitation and Nursing at Beacon and Taconic Rehabilitation and Nursing at Hopewell. The purchase price for the operations is \$33.33, which we met with proposed members equity. The landlord CCP Ulster 1743 LLC and the tenant VS Servicer at Ulster LLC entered into a proposed lease agreement for site control of the facility. The applicant will enter into a consulting and administrative services agreement with the McGuire Group. Edward Farbenblum is the sole member of the McGuire group and Steven Mercurio is an employee of the McGuire Group and is also one of the operator members. There will be no change to beds or services as a result of this application. Based on weekly census data, the facility reported 100% of their 120 licensed beds staffed and 88.3% occupied as of February 5th, 2025, for an 88. 3% occupancy of staffed beds. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Mr. Robinson** Applicant questions only again.

**Mr. Robinson** Is the applicant in the room?

**Mr. Robinson** Questions only than I assume.

**Mr. Robinson** Anybody from the public wish to speak on this application?

**Mr. Robinson** Hearing none, call the question.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** 231043E, Meadowbrook Operating LLC doing business as Meadowbrook Healthcare in Clinton County. Establish Meadowbrook Operating LLC as the new operator of Meadowbrook Healthcare, a 287-bed residential healthcare facility currently operated by CGSR Inc at 54 Prospect Avenue in Plattsburgh. Department recommends approval of the condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second Dr. Torres.

**Ms. Baniak** Meadowbrook Healthcare is an existing 287 bed residential health care facility in Clinton County. This application is for Meadowbrook Operating LLC, an existing limited liability company to be established as the new operator of Meadowbrook Healthcare. The proposed membership is Chana Schlesinger at 2%, Zahava Gross at 45%, Ernest Schlesinger at 29.33%, Sam Schlesinger at 2%, and Slomo Bohm at 21.67%. On November 17th, 2022, the current operator, CGSR Inc entered into an asset purchase agreement with Meadowbrook Operating LLC for the purchase of the operations of the facility for \$376,324, which will be funded by the proposed members' personal resources. On October 14, 2022, Meadowbrook Realty Group LLC and Meadowbrook Propco LLC entered into a real estate purchase agreement whereby Meadowbrook Propco LLC agreed to purchase the real estate associated with the facility from Meadowbrook Realty Group LLC. The real estate transaction was closed. The Public Health Law 2803X notification was provided. Meadowbrook Propco LLC will lease the RHCF to Meadowbrook Operating LLC for a term of thirty-five years. Meadowbrook Propco LLC and Meadowbrook Operating LLC have common ownership. There will be no changes to beds or services as a result of this application. Based on weekly census data, the facility reported that 88.2% of their 287 licensed beds are staffed and 83.3% occupied as of February 5th, 2025, for a 94.5% occupancy of staffed beds. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Questions?

**Mr. Cicero** Frank Cicero, a consultant to the applicant.

**Mr. Kraut** Just to be clear, who is the managing partner of the proposed operating group?

**Applicant** That would be me.

**Mr. Kraut** You don't obviously have majority control of the company, but you're the person who's accountable?

**Applicant** Correct.

**Mr. Kraut** How old is Sam Schlesinger?

**Applicant** I believe he's in his 20s. I don't know his exact age.

**Ms. Baniak** I believe it's 22.

**Mr. Kraut** He's over 21?

**Mr. Kraut** That was the only question I had. If you answered differently, there would have been more questions. Thank you.

**Mr. Robinson** Other questions?

**Mr. Lawrence** I'm just curious about the terms of the lease, thirty-five years seems like a pretty long lease term.

**Applicant** It does have step ups. The rate was set pursuant to appraisals done by two appraisal companies and the lease allows over the course of the lease to revisit the appraisers and adjust if necessary.

**Mr. Lawrence** For thirty-five years, is that fairly typical?

**Applicant** The reason it's set for thirty-five years generally is because there's a HUD financing and the HUD financing goes out thirty-five years, so the lease runs alongside that.

**Mr. Lawrence** Thank you.

**Mr. Robinson** Other questions?

**Mr. Robinson** Anybody from the public on this application?

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Application 241267E, Morningstar Residential Care Center in Oswego County. Transferring 10% ownership interest from one existing shareholder to a new shareholder. Department recommends approval with conditions and a contingency.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr Torres.

**Ms. Baniak** Morningstar Residential Care Center is an existing 120 bed residential healthcare facility in Oswego County. Morningstar Care Center Inc is requesting approval to add one additional shareholder to the ownership structure of Morningstar residential care center. Currently, Joseph Murabito, the sole shareholder and President of Morningstar Care Center owns 100% membership interest. Elemental Management Group LLC currently provides administrative services to Morningstar Residential Care Center. Ryan Gilmartin, the proposed new shareholder is employed by the consulting entity as the Chief Operating Officer. As part of his employment and equity compensation plan with Elemental Management Group, Ryan Gilmarten will receive 2% ownership interest per year over the next five years until Ryan achieves 10% ownership interests. There is no project cost or purchase price associated with this application. There will be no changes to beds or operations as a result of this application. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the ability to proceed in a financially feasible manner. The long-term care ombudsman has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Application 242133E, Delmar SNF, Operations Associates LLC doing business as Delmar Center for Rehabilitation and Nursing in Albany County. This establishes Delmar SNF Operations Associate LLC as the new operator of Bethlehem Commons Care Center, a 120-bed residential healthcare facility currently operated by Good Samaritan Lutheran Healthcare Center Inc at 125 Rockefeller Road, Delmar. Department recommends approval with the condition and contingencies.

**Mr. Robinson** Motion by Dr. Berliner.

**Mr. Robinson** Second by Dr. Torres.

**Ms. Baniak** Bethlehem Commons Care Center is a 120-bed residential healthcare facility in Albany County. Good Samaritan Lutheran Healthcare Center Inc is the previous operator and Denmark SNF Operations Associates LLC has operated the RHCF under receivership since May 28th, 2020. In this application, Delmar SNF Operations Associates LLC doing business as Delmar Center for Rehabilitation and Nursing, a New York limited liability company is requesting approval to be established as the new operator of Good Samaritan Lutheran Health Care Center Inc doing business at Bethlehem Commons Care Center. The proposed membership of Delmar SNF Operations Associates LLC is Mosh Goldstein at 90% and Herbert Paul Constum at 10%. On December 10th, 2019, Delmar SNF Operations Associates LLC entered into an asset purchase agreement with Good Samaritan Lutheran Health Care Center Inc for the sale and acquisition of the RHCF operations and all operating assets for \$900,000. The \$900,000 is to be satisfied via a loan for twenty-four months at 9.63%. Repayment is interest only. Concurrently, Delmar SNF Realty Associates LLC, whose current sole member is Yisrael Hershka entered into a real estate purchase agreement with Good Samaritan Lutheran Healthcare Center Inc. for selling and acquiring the real property for \$5,100,000. Loan for twenty-four months at 9.63%. Repayment is interest only. On December 12th, 2019, Good Samaritan Lutherans Health Care Center Inc and Kenwood Manor Inc entered voluntary Chapter 11 bankruptcy in the U.S. United States District Court for the Northern District of New York. On March 13th, 2020, the Bankruptcy Court joined the sale order under which the Bankruptcy Court approved the sale of Delmar SNF Operations Associates LLC for the operations and real property. The asset purchase agreement and real estate purchase agreement will close simultaneously upon the approval of the application by PHHPC and the Bankruptcy Court. There will be no change to beds or services as a result of this application. The facility reported that 100 percent of their 120 license beds are staffed and 97.5% occupied as of February 5th, 2025, for a 97.5% occupancy of staff beds. The applicant has met the character and competence requirements. The Bureau of Financial Analysis has concluded that the applicant has demonstrated the capability to proceed in a financially feasible manner. The long-term care has reviewed the application and has no objections. The department is recommending contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions?

**Ms. Mazzacco** Were there any other owners that were originally proposed and didn't succeed through character incompetence?

**Ms. Mazzacco** Is there any relationship between the individual with a hundred percent responsibility now through receivership and those who own next as proposed?

**Ms. Baniak** No.

**Ms. Mazzacco** I guess just one comment and then one request. I think that you can see through the applications that have come today related to skilled nursing facilities, the situation that exists, particularly Upstate New York. All of the applications that you've seen today are pretty much related to the Upstate region. I think something that the council needs to be aware of in terms of patient access and the situation that we're facing. My other request would be to see data at the council meeting comparing five years ago to today in terms of the mix of ownership of skilled nursing facilities, because I'm not sure



historically when the state first decided to allow for-profit ownership of skilled nursing facilities that we envisioned a time when that would be the majority and when we would no longer be able to have municipalities or not-for-profits be able to successfully operate in the state. I think it's information that we should have from a public health planning standpoint.

**Mr. Robinson** Thank you.

**Mr. Robinson** Good comments.

**Mr. Robinson** Mr. La Rue, do you want to second that?

**Mr. La Rue** Did you really want to get me going again?

**All** (Laughing)

**Mr. Robinson** I just felt I had to.

**Mr. La Rue** I wholeheartedly support her comments. If we go back, when I first joined the Public Health Council and we had the first retreat, one of the things that I was pretty adamant about was there was a significant transformation underway of long-term care in New York State. It wasn't a planned transformation. We weren't sure that there'd be many people that were happy with it when it was done. I think we're at the tail end of it now. We're suffering the consequences.

**Mr. Robinson** That's a good point. I think as Mr. Kraut just suggested to me as an aside, I think that this in part is what we were hoping to see in the Master Plan for Aging. We, I think, feel like there's still more work to be done there. I think we're dealing with the unintended consequences. Maybe they were intended, I don't know. I'm going to give everybody the benefit of the doubt and say unintended consequences of this evolution.

**Ms. Mazzacco** I'm just going to share that my concern with this applicant is the answer to the question about who the real owners of this are and will be. Based on the answer that I received, I will not be able to support the application.

**Mr. Kraut** Maybe get past the application and then come back to the policy stuff.

**Mr. Robinson** Let's do that. I'm going to call the question on this application now.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** One in opposition.

**Mr. Robinson** Any abstentions?

**Mr. Robinson** None.

**Mr. Robinson** That motion carries.

**Mr. Robinson** You want to make some general comments?

**Mr. Kraut** There's a long history as you say. There's a series of policy issues that probably contributed to the situation we have today. Scott, you correct me because you'll remember the history better than I. Probably the most, the one that really created a big that divergence, I think between not for profits and for profits is for years we saw the rebasing of for profits every time there was an ownership change. The not-for-profits never had a chance to rebase their rates during those situations. That kind of propelled, I think, not-for-profit ownership. You saw a whole section. We eliminated that loophole. I wouldn't call it a loophole. We eliminated the policy change. That slowed down some of it. That's where outside of our limited scope of work, this is a major policy issue for the legislature, the Governor to come up with. I hope maybe we can find an appropriate venue where we can express that. It really means us as individuals talking to your legislators. We're missing the vote right now on the budget to go and testify. Those days have passed. I think all the points are valid.

**Mr. Robinson** I think given the nature of this conversation, and we're not trying to sort of put the Commission on the spot in any way, but it would be helpful actually if in making his remarks to the full council. He could consider making some comments on...as you could hear from this discussion is a real critical issue with regard to long-term care in the state. There are other sectors that are struggling as well. I don't want to only isolate that. Obviously, like every year is a tough budget year. We do understand that the state can't solve every problem in each of the budgets. There's just not enough money for that. I do think that some sense of what a strategy might be going forward would be helpful to understand. Because as we struggle with these individual applications, I think the council is finding itself in a situation where we are almost stuck. Each of these transactions is we'll approve this transaction or that facility will close, and that resource won't be available anymore. Obviously, that's a tough situation to be in. We're sometimes begrudgingly approving applications that otherwise we wouldn't.

**Mr. Robinson** Enough of that pontificating, we do have certificates. Thank you for that reminder.

**Mr. Lawrence** I would just suggest that at some level, I'm assuming that the state has a contingency plan for what's going to roll out over the next three or four years. At some point, that's going to be connected to the work that we're doing here because we are going to be asked to approve nursing homes and other facilities that are going to be on life support. We are to apply the sort of normal procedures or standards and sort of abnormal times. I think it's really imperative that we all sort of have an approach and a strategy for how we're going to move forward with these applications. Looking at the nursing homes, I was sitting here saying...You're at the point of saying do not resuscitate a force or provide them with a lifeline so that they can live another day and battle through whatever they need to. Because at the end of that are real lives with real people with real challenges and crisis and families. Those are the considerations. It would help if we had some guidance and how do we operate in an abnormal environment.

**Mr. Robinson** Observations, Mr. Lawrence.

**Mr. Robinson** Let me go to the certificates here and we will handle these. This first one is a certificate of amendment of the certificate of incorporation for the Bethel Springvale Nursing Home, Inc. Department recommends approval.

**Mr. Robinson** Can I get a motion?

**Mr. Robinson** Dr. Torres.

**Mr. Robinson** Can I get second?

**Mr. Robinson** Dr. Friedrich.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** A certificate of dissolution for the International Center for the Disabled Inc. Department recommends approval.

**Mr. Robinson** Motion by Dr. Torres.

**Mr. Robinson** Second by Dr. Friedrich.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** A Presbyterian Senior Care of Western New York Inc also a certificate of disillusion. Department recommends an approval.

**Mr. Robinson** Motion by Dr. Friedrich.

**Mr. Robinson** Second by Dr. Torres.

**Mr. Robinson** All in favor?

**All** Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Finally, VNS Choice Community Care. The department recommends approval.

**Mr. Robinson** Motion by Dr. Friedrich.

**Mr. Robinson** Second by Dr. Torres.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Ladies and gentlemen, members of the public, thank you all for your patience today.

**Mr. Robinson** We are adjourned.

**Mr. Kraut** The next meeting of the Public Health and Health Planning Council is going to be on April 10th in Albany.