

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

June 18, 2025

*Immediately following the Special Establishment and Project Review Committee Meeting
and the Committee on Codes, Regulations and Legislation Meeting
(Codes scheduled to begin at 9:00 a.m.)*

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

April 10, 2025 PHHPC Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

Val Deetz, Deputy Director, Office of Aging and Long Term Care

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee

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

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Information

22-06 Amendment of Section 23.5 of Title 10 NYCRR (Expedited Partner Therapy for Sexually Transmitted Infections)

For Adoption

24-21 Amendment of Section 405.6 of Title 10 NYCRR (General Hospital Medical Staff Recertification)

24-12 Repeal and Replace of 710.1 of Title 10 NYCRR (Approval of Medical Facility Construction)

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251025 C	Stony Brook University Hospital (Suffolk County)	Contingent Approval
2.	251044 C	Delaware Valley Hospital Inc (Delaware County)	Contingent Approval
3.	251096 C	New York-Presbyterian Hospital - Columbia Presbyterian Center (New York County)	Contingent Approval

Cardiac Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242313 C	Samaritan Medical Center (Jefferson County)	Contingent Approval

Ambulatory Surgery Center – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242332 C	OrthoNY Surgical Suites (Saratoga County)	Contingent Approval
2.	251136 C	Specialists' One-Day Surgery Center, LLC (Onondaga County)	Contingent Approval

Residential Health Care Facility – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242314 C	Van Rensselaer Manor (Rensselaer County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Application

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251126 C	NYU Langone Hospitals (Richmond County) Dr. Kalkut – Recusal	Contingent Approval

Cardiac Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251001 C	Mount Sinai South Nassau (Nassau County) Dr. Lim - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Application

Transplant Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	241258 C	NYU Langone Hospital-Brooklyn (Kings County)	Application was presented at the June 18, 2025 Special Establishment and Project Review Committee Meeting

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers - Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251101 B	Bronx Endovascular Center LLC (Bronx County)	Contingent Approval
2.	251137 B	Wellness Way ASC, LLC (Albany County)	Contingent Approval
3.	251118 E	OrthoNY Ambulatory Surgery Center - Albany (Albany County)	Contingent Approval
4.	251131 E	OrthoNY Surgical Suites (Saratoga County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251068 B	Tri-Med Health Pavilion (Queens County)	Contingent Approval
2.	251106 B	Accelerated Care Inc. (New York County)	Contingent Approval

Dialysis Services – Establishment

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251114 E	Bronx Renal Services LLC (Bronx County)	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Finger Lakes Migrant Health Care Project, Inc.	Approval

Certificate of Assumed Name

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Community Health Center of Buffalo, Inc.	Approval

Restated Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Finger Lakes Health Foundation, Inc.	Approval
Geneva General Hospital	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Application

Acute Care Services – Establishment

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	241015 E	Centralus Health, Inc. (Tompkins County) Mr. Thomas – Recusal	Approval

Ambulatory Surgery Center – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251147 E	Everett Road Surgery Center (Albany County) Ms. Mazzacco – Recusal	Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	241290 E	Elmira Community Health (Chemung County) Mr. Thomas - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231220 E	CLRNC Operating LLC d/b/a Clinton County Nursing Home (Clinton County)	Contingent Approval
2.	232241 E	WRNC Operating LLC d/b/a Wells Rehabilitation and Nursing Center (Fulton County)	Contingent Approval

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| 3. | 202251 E | Hoosick Falls Center LLC d/b/a Hoosick Falls Rehabilitation and Nursing Center (Rensselaer County) | Contingent Approval |
| 4. | 231213 E | Silvercrest Acquisition I, LLC d/b/a Silvercrest Nursing and Rehabilitation Center (Queens County) | Application was presented at the June 18, 2025 Special Establishment and Project Review Committee Meeting |

VII. ADMINISTRATIVE LAW JUDGE’S REPORT AND RECOMMENDATION

- | | <u>Number</u> | <u>Applicant/Facility</u> |
|----|----------------------|----------------------------------|
| 1. | 202086 B | The Coit House LLC (Erie County) |

VIII. NEXT MEETINGS

August 21, 2025 (Albany)
September 18, 2025 (NYC)

IX. ADJOURNMENT

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

State of New York
Public Health and Health Planning Council

Minutes
April 10, 2025

The meeting of the Public Health and Health Planning Council was held on Thursday, April 10, 2025, at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York. Mr. Jeffrey Kraut, Chair presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner Dr. Lawrence Eisenstein Ms. Lindsay Farrell Dr. Marcus Friedrich Mr. Thomas Holt Mr. Jeffrey Kraut Mr. Scott LaRue Dr. Sabina Lim Ms. Michelle T. Mazzacco Mr. Stanford J. Perry	Mr. Peter Robinson Dr. John Rugge Dr. Denise Soffel Ms. Nilda Soto Mr. Hugh Thomas Dr. Anderson Torres Dr. Kevin Watkins Dr. Wendy Wilcox Commissioner McDonald –Ex-Officio
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DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Olutomisin Akanbi – Zoom Ms. Zahra Alaali – Zoom Ms. Lynn Baniak – Albany Mr. Jacob Bintz – Albany Ms. Val Deetz – Albany Mr. Vince DiCocco – Albany Mr. Kenneth Evans – Albany Dr. Douglas Fish – Albany Ms. Shelly Glock – Albany Ms. Sarah Gold – Albany Mr. Ryan Greenberg – Albany Mr. Michael Heeran – Albany Dr. Eugene Heslin – Albany Ms. Geraldine Humbert – Zoom Ms. Celeste Johnson – Zoom	Mr. Jonathan Karmel – Albany Ms. Wajiha Kazmi – Albany Ms. Colleen Leonard – Albany Mr. George Macko – Albany Ms. Marthe Ngwashi – Albany Mr. Jason Riegert – Albany Ms. Claudette Royal – Albany Ms. Lori Schillinger – Zoom Ms. Jackie Sheltry – Albany Dr. Stephanie Shulman – Zoom Mr. George Stathidis – Albany Mr. Michael Stelluti – Albany Dr. Elizabeth Whalen – Albany Ms. Patricia Wrobel – Albany
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INTRODUCTION

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

APPROVAL OF THE MINUTES OF FEBRUARY 6, 2025

Mr. Kraut asked for a motion to adopt the February 6, 2025, Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Mr. Robinson. The motion to adopt the minutes passed. Please refer to page 1 of the attached transcript.

APPROVAL OF THE 2026 MEETING DATES

Mr. Kraut asked for a motion to adopt the 2026 meeting dates. Dr. Torres motioned for approval and Dr. Watkins seconded the motion. The motion to adopt the 2026 meeting dates was approved. Please see pages 1 through 2 of the transcript.

Report on the Activities of the Office of Public Health

Dr. Whalen began the meeting by sharing positive news from the Office of Public Health. She announced that Michelle Davis had joined as the new Deputy Commissioner. Although Dr. Davis was not present due to first-day onboarding activities, she is expected to attend the next meeting. Dr. Davis brings over 20 years of public health experience at local, state, federal, and international levels. Her most recent role was as Special Advisor to the former Assistant Secretary for Health at the U.S. Department of Health and Human Services. Her academic training spans epidemiology, statistics, health policy, maternal and child health, infectious disease, and DEI certification.

Commissioner McDonald joined the meeting and Mr. Kraut introduced Dr. McDonald to provide the Department's update. Please see page 2 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report of the Department of Health

Dr. McDonald opened his remarks by recognizing National Public Health Week, noting that many people are likely unaware of its existence or of what public health professionals contribute to daily life. He emphasized that public health is not a profession one enters for fame or fortune, but rather out of a deep concern for the well-being of others. Dr. McDonald expressed high regard for the 5,400 staff members of the New York State Department of Health (NYSDOH), highlighting their dedication, long hours, and commitment to the mission of serving New Yorkers. He acknowledged their crucial role and thanked them for their continued efforts during this special week.

Dr. McDonald addressed the recent federal funding disruption. On Tuesday, March 2025, he received notice that, effective the day prior, the Department had lost more than \$350 million in federal grants. These included the COVID Disparities Grant, the COVID Epidemiology Laboratory and Capacity Grant, and the COVID Immunization Grant. The termination of these grants issued for cause, deeply impacted the Department, especially given that Health Research Incorporated (HRI), a close operational partner, managed those funds. Dr. McDonald explained that, in response, the Department had to lay off 53 HRI staff members. He made it clear that layoffs are a deeply painful process, affecting not just income but identity and community. He

expressed regret over the way the situation was handled and emphasized that it could have been managed differently. However, he welcomed the involvement of the New York State Attorney General and other states in litigation, which led to a temporary restraining order issued by Judge McElroy in Rhode Island. As a result, those 53 staff members were expected to return to work, though the future remains uncertain as litigation continues.

Dr. McDonald emphasized that despite the formal end of the pandemic in May 2023, the work funded by the terminated grants had continued. Under the COVID Disparities Grant, his team had collaborated with small community-based organizations, many new to grant funding to promote better nutrition, physical activity, and breastfeeding education. These efforts aimed to address the chronic health conditions that worsened COVID-19 outcomes. Similar work was underway through the Epidemiology Laboratory and Capacity Grant and the Immunization Grant, all of which supported preparedness and vaccine outreach. Dr. McDonald acknowledged that he understood the federal government's actions only in the context of broader patterns but expressed hope that the legal challenge would succeed. He reiterated his gratitude to the legal teams supporting the State's case.

Dr. McDonald provided an update on H5N1 (avian influenza), although there have been no human cases in New York and none nationally in the past two months, the Department remains vigilant. Most exposures in the state have come from contact with dead birds. He explained that spring bird migration typically increases the risk of outbreaks and emphasized ongoing collaboration with the Department of Agriculture and Markets, the Department of Environmental Conservation, local health departments, and federal agencies.

Dr. McDonald then discussed a travel advisory issued due to a growing measles outbreak in Southern Ontario, where over 600 cases have been reported. Given the shared border with Western New York, he said the Department felt it necessary to alert residents that measles was “a car ride away.” While a Texas outbreak received more attention, Ontario posed a more immediate risk to New Yorkers. He noted the advisory was well-received in Canadian media and reiterated the importance of the MMR vaccine, which has been in use since 1971. Dr. McDonald stressed that one of the Department's ongoing challenges is combating misinformation about vaccines. He emphasized the Department's commitment to respectful, non-confrontational public engagement, noting that persuasion, not argument is the most effective approach, especially in clinical settings.

Dr. McDonald reported that flu activity remains widespread in New York, although a decline is underway. He said the season has been unusually persistent, with many hospitalizations still occurring. As is typical for this time of year, influenza B is now more prevalent than influenza A. He praised Dr. Lutterloh and her team for their work and expressed hope that flu activity would subside by May.

Dr. McDonald briefly addressed the upcoming FDA review of the next COVID-19 vaccine formulation, expected in mid-May. He acknowledged the recent resignation of Dr. Peter Marks, a key FDA official during the pandemic, calling him a brilliant physician and a significant loss to the agency. He stressed the importance of timely approval and release of updated vaccines.

Dr. McDonald then turned to the issue of overdose prevention, announcing that Dr. Ron Holtgrave would take on a public-facing role going forward. As Senior Policy Advisor, Dr. Holtgrave brings leadership experience from the Office of National Drug Control Policy.

Dr. McDonald recalled that an external consultant once told him that the Department had deep knowledge in this area but lacked centralized leadership. He said Dr. Holtgrave's appointment helps address that gap. Dr. McDonald shared encouraging data showing that overdose deaths in New York dropped 28% in the 12-month period ending October 2024, translating to 1,908 lives saved. He credited the collaboration between state agencies, healthcare providers, and community-based organizations. However, he acknowledged that racial disparities in overdose outcomes persist, and said the Department is actively working to address that issue.

Dr. McDonald concluded by welcoming Dr. Michelle Davis as the new Deputy Commissioner of the Office of Public Health. He highlighted her experience at Health and Human Services Region 2, the U.S. Virgin Islands, and the City of Philadelphia, and expressed gratitude to Laura Trolino, Dr. Liza Whalen, and Dr. Eli Rosenberg for stepping up during the interim period.

Dr. McDonald closed by inviting questions from the Council. Dr. McDonald concluded his report, please see pages 2 through 9 of the transcript to view the complete report and members questions.

Mr. Kraut thanked the Commissioner for his report and turned to Dr. Whalen to provide the remaining Office of Public Health report.

Report on the Activities of the Office of Public Health

Dr. Whalen reported that Dr. Kurunthachalam Kannan, a leading exposure science researcher at Wadsworth, was appointed to a National Academy of Sciences committee. He will help assess long-term health impacts related to a 2021 jet fuel spill in Red Hill, Hawaii. With over 900 published research papers and global recognition in his field, Dr. Kannan's appointment reinforces Wadsworth's leadership in environmental health science.

Dr. Whalen also reported that Beverly Rauch, Director of the Clinical Laboratory Evaluation Program (CLEP), was invited to speak at the American Clinical Laboratory Association's annual meeting. Rauch's participation comes amid new FDA regulations asserting oversight over laboratory-developed tests (LDTs). CLEP, which has regulated LDTs in New York for over 30 years, is the only regulatory body in the U.S. with such longstanding oversight. Her inclusion on the national panel highlights CLEP's and Wadsworth's ongoing influence in laboratory regulation.

Dr. Whalen continued by highlighting advancements from the New York State Newborn Screening Program, led by Dr. Joseph Orsini. Under the Screen Plus Study, the program is piloting tests for 14 additional conditions, including metachromatic leukodystrophy (MLD). A newly FDA-approved gene therapy in 2024 offers improved outcomes for children with MLD, particularly when administered before symptoms emerge.

Dr. Whalen then provided an update on avian influenza (H5N1), noting that wild birds in 56 counties, including New York City, had tested positive since 2022. She clarified that this is not unusual and doesn't indicate immediate risk. The Department has issued public guidance to avoid handling wild birds and to report any clusters to the Department of Environmental Conservation. There have been no human cases and no detections in dairy cattle or raw milk. Monitoring efforts remain ongoing.

Dr. Whalen also shared updates on nutrition initiatives. Governor Hochul has pledged to expand access to the WIC program. Participation has grown by 25% since 2020 and now reaches 445,000 individuals about 66% of eligible participants. The goal is to increase that to 70%, or 500,000 participants, by September 2026. The Governor also proposed \$5 million for Nourish New York (a \$750,000 increase) and \$23.25 million for HIPNAP, maintaining its current funding. She noted concerns over the future of federal funding for programs like WIC and SNAP, which could affect the Division of Nutrition.

Dr. Whalen then shifted to the Office of Science and Technology, reporting that eight public facing dashboards were updated. These include the Prevention Agenda Dashboard and the Community Health Indicator Report. Both offer interactive views of health indicators at state and local levels and are crucial tools for health departments and hospitals in planning and evaluating health initiatives. Other updated dashboards focus on opioids, asthma, maternal/child health, leading causes of death, racial and ethnic disparities, and perinatal outcomes by zip code.

Dr. Whalen provided updates from the Division of Public Health Infrastructure. Interviews are underway for director-level roles in the Office of Local Health Services and the Division. The CDC-funded Public Health Infrastructure Grant is in its third year and is being used to implement collaborative projects across the Office of Public Health. Staff have been hired in all regional offices for community engagement and continuing education efforts.

Dr. Whalen noted that the Office of Local Health Services is preparing to release the State Health Improvement Plan and State Health Assessment. These documents will support hospitals and local health departments in their strategic planning. The office also launched the Prevention Agenda Interagency Task Force with the Office of Health Equity and Human Rights. This task force aligns health goals with broader state agency efforts. Additionally, the team is coordinating with the 1115 Medicaid Waiver initiative to align public health efforts with broader social care and workforce strategies.

Dr. Whalen addressed the status of the New York State Public Health Corps. Originally funded through next year, the program will end prematurely on May 30, 2025, unless new funding is found. Since August 2024, 199 fellows have been hired and placed in 54 host organizations, including local and state health departments. Of those, 170 are currently active and participating in both fieldwork and professional development programs through Cornell University or the University of Miami.

Dr. Whalen added that the Public Health Continuing Education Unit continues to move forward on deliverables such as piloting leadership trainings, developing capacity-building programs with Cornell and SUNY Albany, launching a webcast series, and analyzing training needs across the Office of Public Health.

Dr. Whalen also noted that the Office of Local Health Services recently completed the submission and review process for local health department budgets and annual applications. The office is working closely with departments to ensure timely state aid distribution.

Dr. Whalen announced that recruitment is underway for the summer session of the Pathways to Public Health Internship Program. Fifteen internships will be offered across different disciplines. An emerging leadership program is being added to support both intern supervisors and fellows in developing core public health and supervisory skills. The Academic Partnership Development Program also launched its spring outreach efforts, promoting public health careers through career fairs and partnerships with educational institutions.

Dr. Whalen concluded her update with news from the Center for Environmental Health. Under Public Health Law 1377, draft regulations have been developed to mandate proactive lead safety inspections in pre-1980 rental properties within high-risk communities. These inspections are scheduled to begin in Fall 2025. The public comment period has ended, and the Department is now reviewing feedback in collaboration with the advisory committee on Lead Poisoning Prevention to finalize effective and enforceable guidance.

Dr. Whalen concluded her report, please see pages 10 through 14 of the transcript.

Mr. Kraut thanked Dr. Whalen for her report and introduced Dr. Fish to provide an update on the activities of the Office of Primary Care and Health Systems Management.

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

Dr. Fish opened his report with a note that April is Donate Life Month, a time dedicated to raising awareness about organ, eye, and tissue donation, encouraging registration, and honoring donors. Dr. Fish reported that the Department held a productive meeting the previous day with the Transplant Council. Established under Public Health Law, this Council advises the Commissioner of Health on issues related to organ donation, procurement, storage facilities, and other related matters.

Dr. Fish then addressed recent federal actions related to gender-affirming care. He noted that on February 18, 2025, the Department issued a “Dear Administrator” letter emphasizing the importance of continuity of care. This communication reminded hospitals and diagnostic and treatment centers of their responsibility to provide equitable care, even when treatment is paused or discontinued.

Dr. Fish continued by referencing another guidance issued on March 19, 2025. This third “Dear Administrator” letter focused on patient abandonment and equity in care. It reminded healthcare facilities of their obligations under professional licensure laws, the Emergency Medical Treatment and Labor Act (EMTALA), New York State hospital licensing requirements, and participation in federal and state reimbursement programs. The letter reinforced that all patients must be treated equally when seeking care.

Dr. Fish provided an update on the hospital capacity direct access rollout, part of the Department's health data modernization initiative. He explained that this project aims to eliminate manual reporting by hospitals through automated data submission specifically for metrics like daily and ICU bed census, which were crucial during the pandemic. He stated that the final group of hospitals is expected to be onboarded within the next few weeks.

Dr. Fish then addressed the Acute Hospital Care at Home Program. He noted that the Centers for Medicare and Medicaid Services (CMS) has extended the program through September 2025. Originally launched under the 1135 waiver of the Social Security Act in March 2020, the program also known as Hospital Without Walls was extended again by the Consolidated Appropriations Act of 2023. That law required CMS to evaluate the initiative, and a report published on September 30 shared generally positive findings regarding patient experience, quality, and cost of care.

Dr. Fish concluded with an update on the State's Emergency Medical Services efforts. He said the Department is progressing through the next phase of creating the Emergency Medical Services Task Force and is currently onboarding staff to support the continued operation of the State Surge Operations Center, which remains open 24/7 to assist hospitals and healthcare facilities across New York.

Dr. Fish concluded his report, please see page 14 of the transcript.

Mr. Kraut thanked Dr. Fish for his update and introduced Dr. Torres to provide a report on the activities on the Public Health Committee.

Report on the Activities of the Public Health Committee

Dr. Torres reported that on February 18, 2025, the New York State Department of Health's Prevention Agenda team provided an update to the Public Health Committee on the progress of the 2025–2030 New York State Prevention Agenda. He thanked Dr. Whalen for the collaboration and explained that the updated framework aligns with the CDC's Healthy People 2030 Initiative by incorporating social determinants of health. This framework includes five domains: economic stability, social and community context, neighborhood and built environment, and health care access and quality.

Dr. Torres noted that the agenda outlines 24 statewide priorities and 88 measurable objectives and indicators, all aimed at reducing disparities and inequities. The approach relies on evidence-informed interventions and allows for tracking progress over time.

Dr. Torres announced that the State Health Assessment (SHA) and State Health Improvement Plan (SHIP) documents have been finalized and are ready for immediate release. A significant new feature of this cycle is the creation of the Social Determinants of Health Interagency Work Group. This group will include members from the existing Interagency Task Force on Health Equity, Diversity, and Inclusion. It will bring together experts in public health, economics, health equity, and vulnerable populations to lead statewide collaborative efforts.

Dr. Torres explained that the Prevention Agenda team has also administered a survey to identify organizations outside the Department of Health that intend to support the agenda's priorities and goals. The aim is to increase cross-sector collaboration, strengthen coordination, and track implementation across participating entities.

Dr. Torres highlighted that hospital community benefit spending is being considered as a potential funding source for the Prevention Agenda. He reported that the Fiscal Year 2026 New York State Executive Budget includes a proposal under Article 7 legislation that would require hospitals to report their spending and show how it supports initiatives such as the Prevention Agenda. Dr. Torres concluded that the New York State Prevention Agenda Dashboard will be updated later this year to reflect the new agenda. Following the release of the SHA and SHIP, local health departments and hospitals across the state are expected to submit community health assessments, community health improvement plans, and community service plans.

Dr. Torres concluded his report, please see page 15 of the transcript.

Mr. Kraut thanked Dr. Torres for his report and introduced Dr. Rugge to provide an update on the activities of the Health Planning Committee.

Report on the Activities of the Health Planning Committee

Dr. Rugge reported that the Health Planning Committee met on April 9th. Dr. Rugge emphasized that the meeting was seen as a reset not a fresh start, since the Health Planning Committee has been active for some time but rather a renewed push in its ongoing work.

Dr. Rugge noted that in line with the committee's mission, committee members raised a range of policy issues that need fresh attention, especially given the fast pace of change in both care delivery and payment models. Dr. Heslin and Ms. Sheltry from the Department helped the committee consider how to identify high-priority issues that could also serve as models for future work. Dr. Rugge stated that one such issue selected was PCI (percutaneous coronary interventions). The goal was not just to examine cardiac catheterization to assess conditions, but also to ensure readiness to treat coronary artery problems. This raised questions about patient safety, clinical outcomes, and the cost-effectiveness of shifting more services from inpatient to ambulatory care. As many services now extend into the home, the committee recognizes the need to keep pace and, where possible, help drive these advances.

Dr. Rugge noted that two presentations were especially valuable at the meeting: one on quality and analytics from Department staff and the Cardiac Services Program and another on PCI reimbursement. Following a robust discussion, the committee outlined a three-part process to move forward:

1. Phase One, he explained, involves further education to ensure committee members fully understand PCI procedures and the implications of providing them in ambulatory settings.
2. Phase Two includes gathering input from key stakeholders and experts. These phases are tightly linked.

3. Dr. Rugge said the outcome of both will guide the committee in developing standards, guidelines, and recommendations for programs offering PCI in outpatient settings.

Dr. Rugge added that these recommendations will then be passed on to the Codes Committee and the Council for review and potential adoption.

Dr. Rugge stated the committee also discussed meeting logistics and how often the committee should meet, how long the meetings should last, and what structure would be most effective. Dr. Rugge expressed that this committee meeting was an introduction to the broader issue of shifting care from one setting to another. The hope is that this process can serve as a model both in method and in outcomes for how to approach similar challenges in the future.

Dr. Rugge concluded his report, please see pages 15 and 16 of the transcript.

Mr. Kraut thanked Dr. Rugge for his report and introduced Mr. Holt to provide the report on the Committee on Codes, Regulations and Legislation.

REGULATION

Mr. Holt provided the Report of the Committee on Codes, Regulations and Legislation.

Report of the Committee on Codes, Regulations and Legislation

For Adoption

23-22 Amendment of Section 405.45 of Title 10 NYCRR (Trauma Centers – Nurse Reviewer)

For Information

24-22 Amendment of Section 405.4 of Title 10 NYCRR (12-Week Rule for Foreign Medical School Graduates and Limited Permit Allowances)

Mr. Holt motioned for the adoption of the proposed Amendment of Section 405.45 of Title 10 NYCRR (Trauma Centers – Nurse Reviewer). Dr. Berliner seconded the motion. The motion passed. Please see page 17 of the transcript.

Amendment of Section 405.4 of Title 10 NYCRR (12-Week Rule for Foreign Medical School Graduates and Limited Permit Allowances) was presented for adoption and information and will return for adoption. Please see page 17 of the transcript.

Mr. Holt concluded his report. Mr. Kraut thanked Mr. Holt and introduced Mr. Robinson to provide the report on the Establishment and Project Review Committee.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251013 C	Montefiore Mount Vernon Hospital (Westchester County)	Contingent Approval

Ambulatory Surgery Center – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242333 C	Endoscopy Center of Western New York, LLC (Erie County)	Contingent Approval

Certified Home Health Agency - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	251016 C	Marquis Certified Home Care, LLC (Albany County)	Approval

Mr. Robinson called applications 251013, 242333 and 251016. Mr. Robinson motioned for approval. Dr. Torres seconded the motion. The motion passed. Please see pages 17 and 18 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242268 C	Hospital for Special Surgery (New York County) Dr. Lim – Interest	Contingent Approval

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222053 E	VS Servicer at Beacon LLC d/b/a Taconic Rehabilitation and Nursing at Beacon (Dutchess County)	Contingent Approval
2.	222054 E	VS Servicer at Fishkill LLC d/b/a Taconic Rehabilitation and Nursing at Hopewell (Dutchess County)	Contingent Approval
3.	222055 E	VS Servicer at Ulster LLC d/b/a Taconic Rehabilitation and Nursing at Ulster (Ulster County)	Contingent Approval
4.	231043 E	Meadowbrook Operating LLC d/b/a Meadowbrook Healthcare (Clinton County)	Contingent Approval
5.	241267 E	Morningstar Residential Care Center (Oswego County)	Contingent Approval

Mr. Robinson called applications 222053, 222054, 222055, 231043 and 241267. Dr. Torres motioned for approval, Dr. Watkins seconded the motion. The motion passed. Please see page 19 of the transcript.

Certificates

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The Bethel Springvale Nursing Home, Inc.	Approval

Certificate of Dissolution

Applicant

E.P.R.C. Recommendation

International Center for the Disabled, D/B/A Institute for Career Development

Approval

VNS CHOICE Community Care

Approval

Presbyterian Senior Care of Western New York, Inc.

Approval

Mr. Robinson introduced The Bethel Springvale Nursing Home, Inc., International Center for the Disabled, D/B/A Institute for Career Development, VNS CHOICE Community Care and Presbyterian Senior Care of Western New York, Inc. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion passed. Please see page 20 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers - Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242292 E	Crystal Run Ambulatory Surgery Center of Middletown (Orange County) Dr. Friedrich – Interest/Abstaining	Approval
2.	251014 E	Atrium Endoscopy (Suffolk County) Mr. Kraut Interest	Contingent Approval
3.	242221 B	Ambulatory Surgery Center of Williamsburg (Kings County) Dr. Lim – Interest	Contingent Approval

Mr. Robinson called application 242292. Mr. Robinson noted for the record that Dr. Friedrich has an interest and abstention. Mr. Robinson motioned for approval. Dr. Torres seconded the motion. The motion passed with Dr. Friedrich's noted interest. Please see page 20 of the transcript.

Mr. Robinson called applications 251014 and 242221. Mr. Robinson noted for the record that Mr. Kraut has an interest for application 251014 and Dr. Lim has an interest for 242221. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion passed with Mr. Kraut's and Dr. Lim's noted interest. Please see page 21 of the transcript.

Diagnostic and Treatment Center – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	242263 B	Medical Center of Williamsburg (Kings County) Dr. Lim – Interest	Contingent Approval

Mr. Robinson called application 242263. Mr. Robinson noted for the record that Dr. Lim has an interest and abstention. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion passed with Dr. Lim's noted interest. Please see page 21 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231220 E	CLRNC Operating LLC d/b/a Clinton County Nursing Home (Clinton County)	Contingent Approval

Mr. Robinson called application 231220. Mr. Robinson motioned for approval. Dr. Torres seconded the motion. The motion to approve failed, with thirteen members voting for approval, three members opposed and two members abstaining. Please see pages 21 through 26 of the transcript.

Mr. Kraut then motioned for disapproval, Dr. Berliner seconded the motion. The motion to disapprove failed with four members voting in favor of disapproval, twelve members voting not in favor of the disapproval and two members abstaining. Please see pages 26 and 27 of the transcript for the complete discussion.

2.	232241 E	WRNC Operating LLC d/b/a Wells Rehabilitation and Nursing Center (Fulton County)	Contingent Approval
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Mr. Robinson called application 232241. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion to approve failed, with thirteen members voting for approval, three members opposed and two members abstaining. Please see pages 27 through 28 of the transcript.

Mr. Robinson then motioned for disapproval, Dr. Berliner seconded the motion. The motion to disapprove failed with three members voting in favor of disapproval, thirteen members voting not in favor of the disapproval and two members abstaining. Please see pages 28 through 29 of the transcript for the complete discussion.

3. 202251 E Hoosick Falls Center LLC d/b/a Hoosick Falls Rehabilitation and Nursing Center (Rensselaer County) Contingent Approval

Mr. Robinson called application 202251. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion to approve failed, with eleven members voting for approval, four members opposed and three members abstaining. Please see page 29 of the transcript.

Mr. Robinson then motioned for disapproval, Mr. Thomas seconded the motion. The motion to disapprove failed with three members voting in favor of disapproval, thirteen members voting not in favor of the disapproval and two members abstaining. Please see pages 29 through 31 of the transcript for the complete discussion.

4. 242133 E Delmar SNF Operations Associates, LLC d/b/a Delmar Center for Rehabilitation and Nursing (Albany County) Contingent Approval

Mr. Robinson called application 242133 and motioned for approval. Dr. Torres seconded the motion. The motion passed with one member opposed. Please see pages 31 through 32 of the transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

ADJOURNMENT

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

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING
April 10, 2025, 10:15 AM
ESP, CONCOURSE LEVEL, MEETING ROOM 6 ALBANY
TRANSCRIPT

Mr. Kraut I'm Jeff Kraut. I have a privilege to call to order the April 10th meeting of the Public Health and Health Planning Council. I'd like to welcome our members, Commissioner McDonald, participants and observers. You have heard from Mr. Holt about the importance of a record of appearance and the rules that we have for webcasting. I will just add that we want to encourage members of the public to join the department Certificate Of Need Listserv. The PHHPC regularly sends out important council information and notices such as our agenda, our meeting dates and policy matters. There are printed instructions at the reference table how to join the Listserv. We'd encourage members of the public also to reach out to the Council Secretary, Executive Secretary Colleen Leonard for any assistance if you will in joining that list. In addition, from Commissioner McDonald, we're going to hear from Dr. Whalen about the Office of Public Health, Dr. Fish about the Office of Primary Care and Health Systems Management. Dr. Torres will provide us an update on the Public Health Committee and the Ad Hoc Committee to lead the State Health Improvement Plan, followed by Dr. Rugge with a report of the activities of the Health Planning Committee that met yesterday. You will hear again from Mr. Holt who will present the regulations for council action. Mr. Robinson will be reporting on a number of CON applications that were reviewed at a previous meeting of the Establishment and Project Review Committee. I just want to remind the council that we've organized the agenda and the topics and the categories, particularly those of the Establishment and Project Review that captures our roles and responsibilities. We're planning to batch Certificate Of Need applications for adoption here today. Members in particular, please take a look at how we've batched those applications. If you have any thought that you'd like to request to remove a project out of a batch category into taking up singly, we will do so. You just please let Ms. Leonard know of your desire for us to do so, and we'll modify the agenda.

Mr. Kraut First, I'd like to start with a motion to adopt the February 6, 2025, minutes of the Public Health and Health Planning Council.

Mr. Kraut May have a motion?

Mr. Kraut Dr. Torres.

Mr. Kraut A second, Mr. Robinson.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Thank you.

Mr. Kraut The next is we have printed a schedule of our 2026 meeting dates. I'd like a motion to accept and adopt and print the schedule of those meeting dates.

Mr. Kraut Dr. Torres.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Watkins.

Dr. Rugge Jeff, are these different than we already had?

Mr. Kraut No, these are the ones that we had reviewed previously. I don't believe we changed the 2026 dates, right?

Unknown Speaker No.

Mr. Kraut I would just encourage everybody to take a look at them. We will send them out to everybody to make sure that they're appropriately calendared for the year. You have the location where they're being held so you can plan appropriately. What I'd like to do is once the Commissioner arrives we'll stop doing whatever we're doing. The Commissioner has a very tight schedule today. We'll will allow him the privilege of giving his report, speaking to us, and then we'll resume our regular thing.

Mr. Kraut Let me just turn right now to Dr. Whalen to give a report on the activities of Public Health.

Dr. Whalen Thank you, Mr. Kraut.

Dr. Whalen Good morning, everybody. I'm happy to be here this morning to provide this update from the Office of Public Health. I'll start with some good news. We are joined by Michelle Davis, who is going to be the new Deputy Commissioner of the Office of Public health. She has just started this morning. She is doing all the wonderful things that go with the first day of work, onboarding, and getting her picture taken. Is not with us but will certainly be here at the next meeting. She is joining the Office of Public Health as an experienced civil servant with over twenty years Public Health experience at all levels of government in the United States, as well as the Caribbean and on the continent of Africa. She most recently served as Special Advisor for the former Health and Human Services Assistant Secretary for Health. Over the span of her career, she's served in leadership roles with city, state and national professional public health organizations and has received awards for her public health service. She received her academic training in the fields of basic science, epidemiology, statistics, health policy, maternal and child health, infectious disease, and has certifications in DEI.

Dr. Whalen I will pause now as we are joined by Commissioner McDonald.

Mr. Kraut Thank you, Dr. Whalen.

Mr. Kraut We're looking forward to your being joined here.

Mr. Kraut It is my pleasure to introduce Dr. James McDonald, our Commissioner to give his report.

Dr. McDonald Good morning, everybody. It's great to be with you today. I just want to share a couple updates. One, I do want to acknowledge this is National Public Health

Week. I think one of the things about National Public Health Week, I think most people probably don't know it's National Public Health Week. I think actually most people really don't what public health does for their lives anyways to be quite straightforward with you. One of things I just wanted to share with folks is nobody goes into public health for fame or fortune. You do it because you care deeply about other people. Our staff in particular, I have so much respect for my staff. I'm thrilled with the ones I see here, but there's another 5,400 scattered throughout the state right now. I have a really great team at the New York State Department of Health. I have people who work long hours. They're dedicated to the mission. Some of them work every day. They just care very deeply about the people of New York. I just don't think New York understands how good they have it, that we have such a venerable, historic Health Department with such great people. Anyways, I'm really glad to be here today, but I want to just thank my staff for everything they do during National Public Health Week. I want to talk about a couple things. The first I want to start with is the federal transition. This has been a lot for us, just to be really straightforward. I want to just give you a little bit of what it's like to be me for a little bit here. March 25th, it was a Tuesday morning. I quietly came into work, like I usually do, and then received three letters that said, effective the day before March 24th, we had lost over \$350 million worth of grants, for cause, no less. That was just a lot for us to absorb. I think many of you know that Health Research Incorporated is an important partner to New York State Department of Health. They're the ones who accept our federal grants and actually carry out the work. There's a number of people who we value very deeply who work for us with HRI. It took us several days to just absorb the impact of this and just try to minimize the impact on our staff. Regrettably, we had to lay off fifty-three Health Research Incorporated staff. Just so you know. I don't like laying off people. I want to be very clear about that. When you lay somebody off, you don't just take away their job. You don't just take their income. You do damage their workplace identity. It's really awful for somebody to be laid off. You also take away their workplace friends. It is really awful for someone to be laid off and to have to do that was terrible. I just think this could have been done in such a different way where that didn't have to happen. Having said that, I was very happy to see the Attorney General of New York State, as well as other states and jurisdictions get involved with litigation that did cause Judge McElroy in Rhode Island to issue a temporary restraining order last week. Those fifty-three laid off HRI staff come back to work tomorrow. Lest we start celebrating that, there's ongoing litigation until it's uncertain what the future will entail. I'm very glad the legal team of the New York State Department of Health worked with the Attorney General in these other states are working hard. Just so people know, when you think about what the work was happening. In the three grants, one was called the COVID Disparities Grant, one was called the COVID Epidemiology Laboratory and Capacity Grant, another was called the COVID Immunization Grant. The work was ongoing. The work didn't stop because the pandemic was over. I'm very thankful the pandemic ended in May of 2023, my friends, but the work was ongoing. Just examples of some of the work. In the COVID Disparities Grant, my team was working with small community-based organizations that, quite frankly, had never received grants before. 25% of those organizations from working with my team learned how to actually get money from other grants. They were working on things like improving nutrition, helping people to see the value of exercise, helping other people see the values of breastfeeding. These are things that are very consistent with Make America Healthy Again. It's very consistent with really one of the big reasons why the United States did so poorly during the pandemic. It's because we were so unhealthy in the first place. There was a lot going on to prevent chronic disease. With the Epidemiology Laboratory and Capacity Grant, again, a lot of work going on to make us better able to handle a pandemic, not just from a preparedness standpoint, but really just from healthier standpoint. With the Immunization Grant, again, very good work to help people be more likely to get immunizations of all types. I think it's just important to understand... I

understand why the federal government did what they did only to the extent of it's just the pattern that's been going on. I just certainly do hope we prevail in court, and again very thankful for the legal teams that's helping us. I want to go next and talk a little bit about something I think I just want to make sure you know we still are vigilant about H5N1. Every time I come in front of you, I talk about avian influenza. It's something where I think we've achieved a bit of a detente with this virus right now. There hasn't been a human case in the United States in the last two months. There has yet to be a case in New York State. Local health departments have done a really good job of evaluating people who are exposed. What you've seen for exposure is someone's exposed to a dead bird. It's typically what we're seeing in New York State. One of the things that I just think is important is when you think about what's seasonality of H5N1 among birds, and how does that affect us in North America? The migratory patterns of birds are such that the Spring is when you'll see more activity among birds because they're migrating here. And then the Summer, it's traditionally waned off. We're keeping a close eye on all this. The department's very vigilant about this. We work closely with Health and Human Services. I was on a call yesterday with Health and Human Services, where all the relevant federal agencies are involved. I've worked very closely with Commissioner Ball from New York State Agriculture and Markets. I've work very closely with Department of Environmental Conservation on this. We're seeing a lot of local health department partnership as well. We remain vigilant on this to make sure this is something that we can mitigate in New York State. I want to shift a little bit to measles. Measles is a very interesting topic for so many reasons. One of the things we did last week though that was kind of different for us, was last Thursday we issued a travel advisory. Now, the New York State Department of Health doesn't usually issue travel advisories. Why did we do it this time? I think everybody's very familiar with the outbreak of measles in Texas. It's terrible that over 500 children are affected by that. One of the things our epidemiologic team really did, and brought to my attention a couple weeks ago, was that it's really the Southern Ontario outbreak that concerns me more. There are over 600 cases, but Southern Ontario, we share a border with them. The Western New York counties are right there. People were going back and forth. It really brought to my attention just the need to make sure New Yorkers knew when you travel measles is literally a car ride away. I was surprised how much the media picked this up, not in the United States, but in Canada. I don't usually read the Toronto Star, but it showed up there. It showed up in some of the other things. I think what was interesting is just seeing how the Canadians looked at this. They welcomed it. I think the Canadians generally are very polite people anyways. It was just nice to see that everybody's saying the same thing. The best way to prevent measles, as you know is to use the measles mumps and rubella vaccine. It's been around since 1971. One of the challenges we're doing at the Department of Health is how do we partner with others to figure out what's the best way to dispel the misinformation, persuade people, but do it in a civil and kind way. We're the Health Department. We're polite all the time. That's just who we are. We're your Health Department. We are not interested in getting in conflict or arguments with anybody. I can tell you, as a pediatrician for many years, one of things I learned a long time ago is the exam room is not the place for an argument. It just doesn't work. It's not how you persuade people and win friends and get people vaccines. It's important work that we have going on in the department. I'm going to talk a little bit about flu. We still see flu in New York State, still widespread, but Dr. Lutterloh has been doing a great job with her team. We're seeing flu start to decline in New York. What a flu season this has been for New York. It's still lingering. We're still seeing a number of people in the hospital. We're still widespread. We're seeing progress here. As typical during the end of most flu seasons in New York, you see more influenza B than A. We're starting to see that now as well. Hoping by May, this actually goes away for us. The only thing I'll mention about COVID vaccine is we do hope that the Food and Drug Administration meets in mid-May to approve the

strains for the new vaccine. It's not lost to me. There's been some significant changes in the Food and Drug Administration. You know, I actually knew Dr. Peter Marks, worked with him during the pandemic, met him in person only recently, just last month. What a brilliant physician this man is, what a loss for the Food and Drug Administration. I'm very sorry to see his resign. I'm hoping the Food Drug Administration understands the importance, though, of making sure that the next COVID vaccine is on time. I want to just talk a little bit about a new topic. I don't talk to you about our overdose work in the Department of Health, but I'm going to have Dr. Holtgrave join the rotation of people who come address you from time to time. Dr. Holtgrave is our Senior Policy Advisor in all of our overdose work. I'll share this with you. You know, many organizations engage consultants from time to time on things. Last year we did at one point, just to look at all the overdoses work we were doing. One of the things that consultants said to me that was really interesting was, you know he said, there's an old saying, "if Hewlett Packard knew what Hewlett Packard knows, they'd be bigger than Microsoft." He said, "If the New York State Department of Health knew what the New State Department of Health knows about overdose work, boy, you would make a difference." It was a lovely and honest way of saying to us we got a lot going on here, but it would do better if there was one person leading it and one person aligning it. I was thrilled when Dr. Holtgrave became available from the Office of National Drug Control Policy. What just a real inspiration he has been, a great leader. New York is making some progress with the overdose epidemic. You know, when you look at the most recent numbers across the United States, if you look in October to October twelve month period ending October 2024. In New York State, we're down 28% for overdose deaths. That trend is continuing month over month. I think that's very important. Again, a lot of good reasons why I love having Dr. Holtgrave here. He's a biostatistician at heart. That translates to 1,908 lives that were saved in New York State. Over 1,900 people are with us now. There's an enormous amount of work going with the Office of Addiction Services and Supports, with the Office of Mental Health, the Department of Health, all the hundreds of community-based organizations, all the healthcare providers. I mean, there's so many people working on this. The overdose problem in New York State is really a shared experience for all of us. I won't ask anyone to raise their hands, but almost everybody knows someone who struggles with this terrible disease. It's great to see this. One of the challenges we still have though is the racial disparities persist. We don't see the same progress in people of color, which represents a concern of mine in an area that we're focused on in the department. I want to end on one note. I want to welcome a new staff member to the New York State Department of Health. Her first day of work is today. She is not with you in front of you though. We have a new Deputy Commissioner of the Office of Public Health. Her name is Michelle Davis. Very thankful to my staff who had a welcoming breakfast for her on the 14th floor of Corning Towers. She's sitting with Human Resources right now doing the endless amount of onboarding paperwork it is to be a new employee of the New York State Department of Health. I'm really glad to have Michelle Davis here. She's a very accomplished Public Health professional. She comes to us from Health and Human Services, Region 2. I really value her federal experience. She's a former State Health Officer of the United States Virgin Islands. She was also a State Health Officer in the City of Philadelphia. It's just great to have her on the team. I want to make sure I thank our Deputy Director, Laura Trolio, who just did a splendid job for seven months stepping in and really serving that role. I also want to thank Dr. Liza Whalen, who's with me today who really did a lot as well and Dr. Eli Rosenberg as well, who just really stepped in and did a beautiful job with the Office of Public Health during that time. With that, let me stop and see if folks have questions.

Mr. Kraut Thank you so much, Commissioner.

Ms. Soto Good morning. Nilda Soto, council member. My question is, what are the projections of the possible cuts in Medicaid funding from the federal side? Do you think that the New York State and particularly the legislature, which hasn't passed the budget yet can offset those costs?

Dr. McDonald You're asking, what are we going to do if there's cuts in Medicaid? Let me talk about what we're doing. I was down in DC last month. I met with three members of Congress on the Republican side with our Medicaid Director, Amir Basiri, trying to make it really crystal clear to them that we really aren't going to well if there is a cut in Medicaid. Just to make sure you understand, the conversation isn't just Medicaid, my friends. It's the Affordable Care Act. In other words, if you look at our Essential Plan product, we have a 90% federal, 10% state contribution to that. If there's a substantial change, that impacts us as well. One of the things that I heard from them is they feel like there's a lot of consensus about a work requirement. Concerns me, because I'm just not sure how that would work, but we made it really clear that if we see cuts to Medicaid, this hurts everybody. I think this is really important for people to understand is that when you make cuts in Medicaid, this hurts everyone. To answer your question though, Is the legislature and the Governor able to It deal with the offsets? The answer to that is I don't know. It depends on what they are, but they could be substantial. Now, just to give people a frame of reference, the amount of money we have in Medicaid in New York State is \$93.3 billion projected for next fiscal year. The other thing I'll share with you is our Affordable Care Act program is a \$13 billion project. This is not the type of money that a state like New York can just all of a sudden materialize. New York has a great financial reserve. One of the things Governor Hochul did was when she was in office or the reserve was four billion, it's \$21 billion now. We're not in a position to offset substantive cuts here. What we're focused on is trying to look for how do we save money on administrative aspects of Medicaid, as opposed to looking at things that reduce eligibility, quality, or access to care. That's what we are focusing on. That sounds simple, but my gosh that's been hard to do. Because even when we find the administrative savings, it's amazing that there's interested stakeholders who oppose us on that every step of the way. I think we need to look at Medicaid as a very vital public health program that needs to be preserved and protected in New York. We're doing what we can. I'm answering your question as honestly as I can, but I didn't give you a specific answer because I don't have one, my friend.

Mr. Kraut Any other questions?

Mr. Kraut Yes, Dr. Eisenstein.

Dr. Eisenstein Good morning. Larry Eisenstein, council member. Thank you, Dr. McDonald. Question, since we're talking about Medicaid, I know I keep bringing up the Medicaid waiver. Has there been any discussions about keeping any changes being made, or are we expected to consistently work through that because there's still a lot of work going forward until we hear otherwise?

Dr. McDonald The 1115 Amendment, the New York Health Equity Reform Waiver is set to expire March 31st of 2027. That's my understanding. I haven't heard anything from the Senate for Medicaid and Medical Services that would change that. We're blazing forward. I don't know why there would be a change in that. When you think about what the waiver is spent to do, just so people understand the purpose of the waiver. The waiver is to try to look at how can you find demonstration projects that help achieve better health outcomes generally at a lower cost. The federal administration should be very much aligned with what we're doing. When you look at some of the work we're doing, for example, like some

of the work is encouraging more people to go into healthcare, right? We have a big national healthcare workforce shortage. I don't understand anybody opposed to that. When you look at our social care networks, half of our investment almost is in that social care network. It's really trying to improve individual social determinants of health, which, again, very consistent with what Make America Healthy Again is about. I'm hoping this just moves forward and politics doesn't get in the way.

Dr. Soffel Good morning, Commissioner. First, I want to say I really appreciate the uncertainty that you are operating under. I do not envy you navigating these waters. It's hard enough to do it for a personal family situation. I can't imagine doing it for the New York State Department of Health. Godspeed to you. My question has to do with how much money does the state Health Department currently receive in federal grants that could potentially be at risk? My ongoing concern about the workforce in the department and how much of that might. I know we've just been inching our way back to pre-pandemic levels of staffing. I worry that that could erode dramatically if we see the kinds of cuts that potentially could be coming down the road. Have you had we started to think about how to approach if you need to do staff cutting how that could be managed in a way that does the least damage to the functioning of the department? I feel like attrition is the easiest, but it's also the clumsiest. Just whatever thoughts you have, and I appreciate that they will be preliminary at this point.

Dr. McDonald Thank you.

Dr. McDonald When we looked at what happened to us with the three COVID related grants that we had, we actually had too very... It's interesting. We could have just simply laid off 250 people the first day. Obviously, we didn't do that. We ended up at fifty-three because we were able to go through and methodically analyze everybody's situation personally and then work through the process and only lay off fifty-three. I say only layoff fifty-three, but I want to make sure you know that was heartbreaking for me. Everyone should know that if someone ever gets laid off in New York State Department of Health, I looked at your name, I understood your situation, and it bothered me deeply. I care about every employee of the New York State Department of health very much so. We have roughly 1,300 people who work for Health Research Incorporated. That's the group that is funded by federal grants. Not every federal grant is vulnerable though because some are for different periods of time than others. Also, though, we have other people who work for different grants. We get grants from all kinds of agencies, but most are from the federal government. What we're doing, though is move people to different grants as best we can. We are trying to find other ways to find funding. Like diversifying funding, it sounds simple, doesn't it? Most state health departments like ours are very dependent on the federal government on federal grants. When you think about who the main benefactor of grants across health departments it is the federal government for every state health department. Just to give you context though, if you look at our \$113.6 billion dollar budget proposed for next year, 65% of it is federal funds. Now, most of that's Medicaid and essential plan. You know, you asked an honest question. I can't give you a straightforward answer. What I'm saying is we are looking at where we think there's high risk situations Just so you know, I meet with every state health officer Tuesday at 4:30pm. Every state is struggling with the same issue. Health and Human Services is being restructured. One of the things we're seeing right now is we aren't getting great communication from Health and Human Services like from CDC, because of all this restructuring. We think that will abate in two to three weeks because of what we learned from when the Department of Education was restructured. There was a period of people had to be reassigned work. There's so much uncertainty in the federal transition right now that it's really hard to answer your question

more specifically. I don't mean to sound critical. I really think the federal transition could have been more deliberate and thoughtful. When you think about what's going on right now in our country it doesn't need to be this way. Had things been done in a deliberate, thoughtful manner, it would have minimized harm. For example, had we been told we were going to lose these grants in ninety days, we could have done things that would have maybe not afforded anyone being laid off. We could have done some other things too. The whole federal transition just seems so chaotic. It's creating a great deal of under stress, not just for us, but as you said, for your family. I just don't think this is healthy for the country to be going through something that's so chaotic right now. I just think it's healthy at all.

Mr. Kraut Any other questions for the Commissioner?

Mr. Kraut Yes, Ms. Mazzacco.

Ms. Mazzacco Good morning, Commissioner Michelle Mazzacco, member of the council. I'm not sure if you've had an opportunity to see a letter that was sent to the Public Health Council and the Governor from Leading Age regarding the nursing home hours per patient day regulation. The letters that were issued recently to nursing homes across the state. I wonder if we could speak for a moment about that. The current letters were issued a day after we received notice that somehow the data had shown that in the rear-view mirror, quarter three, 2023, that we did not have a staffing shortage in most of the state, which from a boots on the ground standpoint weren't really what it felt like. While overall at a high level, the concept of minimum staffing standard sounds good, as with everything in life, sometimes it all comes down to the details. In the details of this regulation, hours per day that count from a federal perspective are discounted from a state perspective; CNA trainees, nurse administrator positions that are actually providing some of their day in patient care, which happens routinely if someone gets COVID and calls out that morning, right? You jump in and do what you need to do to care for residents, but those don't count. They exacerbate the issue that we face because they then apply penalties for not meeting the standards. I wonder if we could speak a little bit about that.

Dr. McDonald Sure.

Dr. McDonald I think just to make people should notice the issue is the New York State Department of Health is enforcing a state law, which really addresses hours per resident day, a minimum staffing law. There's a methodology that we put together that's been constructed with the Department of Labor to address this. There are areas of the state that are no longer under staffing shortage. Executive Order 4 mitigated all of this during the pandemic, but that expired. That wasn't meant to go on forever. One of the things that I think we have to acknowledge is I did read the letters. One of the thing I think that people should understand is that the numbers that were in the letter about worrying about fines. I don't think the people who understand that their department has some ability to mitigate that. I don't want to get too much into the other, but it doesn't necessarily have to be the maximum fine every day. There's some room for us to mitigate that. Again, don't want to give too much detail about that. The other thing I just think we just have to acknowledge is one of things I've learned by going to nursing homes across the state is it would be nice if there was some legislative activity to help scope of practice change in New York State to be a little bit more aligned with other states. One of the things I hear from every nursing home is if we could have the interstate medical license or compact for nurses, forty-two other states are on board, it would help us. I'm a little more optimistic this year. This may not help nursing homes directly, but one thing I see in New York is we're the only state where a medical assistant cannot administer a vaccine, but I was heartened that Chair

Amy Pollen from the house has before the bill that medical systems could give a vaccine. Senator Toby Stavisky was very interested in helping us with that as well. I'm heartened that that might happen. If we can get things like that happen, we might be able to mitigate some of nurses being in more appropriate clinical environments. It's a complex issue. We're enforcing the law. This is really probably all I can say in that topic today for now. It's an ongoing process. Obviously, we all want the same things, which is safe, dependable care in our nursing homes in New York State. As the regulator, we're in the uncomfortable position of just enforcing laws, but we understand that there's issues here that are larger than just the moment.

Mr. Kraut Commissioner, I think there are no other questions, so I'll just close with I marvel at your patience. In the face of uncertainty, it generates an enormous amount of fear and where you're leading an industry here that has a lot of pressures on it, as you just heard, staffing and cost. We're very dependent obviously on federal funding for Medicaid in addition to the state funding. We just know with your thoughtfulness hopefully you will help those people in the state in policy making positions and the ledge to make good decisions generated by good data. Thank you. None of us want your job.

All (Laughing)

Dr. McDonald Well, I want my job.

All (Laughing)

Dr. McDonald Thank you for the kind words. Just so people know, it's funny. I'll share this really quickly. It's a little bit odd to walk around the Department of Health and hear people saying, we're praying for you.

All (Laughing)

Dr. McDonald I'm fine. I am fine. Just so that people know we can fight multiple wars at the same time, but I am fine. We're going to get through this, my friends. We are going to get through this. I do want to let you know that I normally like to sit and linger. I have to actually hop in my car real quick and head down to the city for a meeting later on today. Thank you so much. I appreciate all the work you're doing. It's a difficult time for all of us. Thanks so much, everybody.

All (Clapping)

Mr. Kraut He knows people are praying for him. He knows what a Met fan feels like. We're going to do good this year. Very good this here, hopefully.

All (Laughing)

Mr. Kraut Dr. Whalen, I'm going to return to you to give the report. Dr. McDonald talked about public health. Of the last year, I think we spent five trillion dollars in health care in the united states and about five percent of that on public health. People don't recognize the quality of science that occurs particularly in our Health Department in the Wadsworth Laboratories in the evidence-based approach that your group has led the nation, frankly. I just wish we get to talk more about it. I hope one day that I will still be on the council that we will host a meeting in the new laboratory for Wadsworth. I'd love to have a Public Health Council meeting held when that building becomes operational.

Dr. Whalen That sounds like a great idea. I think we all need something to look forward to. I'll start my updates for the centers with Wadsworth. I want to share with you two of the wonderful employees at the Wadsworth Center have been asked to be on national committees. The first of these is Dr. Kurunthachalam Kannan, who is a research scientist. He's been invited by the National Academy of Sciences Engineering and Medicine to serve as a member on the Committee of Clinical Follow-Up and Care for those impacted by JP5 release at Red Hill. This is something that occurred in Hawaii. There was a jet propellant aviation fuel spill in November 2021. He is going to be part of a committee that is going to evaluate the risk of long-term exposure, look at clinical guidance, and provide a final report. Dr. Kannan is a globally recognized leader in exposure science and biomonitoring, has authored over 900 research papers in environmental health sciences, and is one of the most highly cited researchers in his field. His appointment to this prestigious committee underscores his expertise in leadership and exposure science and reinforces the Wadsworth Center's leadership in environmental research. The second is Wadsworth Center's CLEP, Clinical Laboratory Evaluation Program, Director Beverly Rauch joins the National Panel on Laboratory Developed Tests Regulation. A bit of background on that. The CLEP's program within the Wadsworth Center provides regulatory oversight for clinical testing laboratories in New York State. As part of its regulatory responsibilities, CLEP reviews and approves laboratory developed tests to ensure both analytical and clinical validity. While most tests are FDA approved and sold by manufacturers, some laboratories develop their own tests for patient testing without FDA approval. These are known as the laboratory developed tests. CLEP is the only regulatory body in the United States that requires this review and has done so for over thirty years. However, in a major policy shift, the FDA recently amended federal regulations to assert oversight of these laboratory developed tests. This new final rule has triggered industry wide discussion and led to at least one lawsuit. Given CLEP's unparalleled expertise in LDT regulation, Beverly has been invited to serve as a panelist for the American Clinical Laboratory Association's annual meeting in Washington. She will be participating in advocacy. She did participate in a panel discussion on clinical laboratory developed testing services, litigation, legislation, and regulation. Her participation highlights CLEP's, national leadership, and LDT regulation and reinforces, again, the Wadsworth Center's critical role in shaping the future of clinical laboratory oversight. Finally, from Wadsworth, the New York State Newborn Screening Program at the Wadsworth Center has a long history of pioneering newborn screening advancements. I'm sure you were all aware of babies get a heel stick when they're born to test for a number of heritable conditions. We were the first state to screen for sickle cell disease, crab disease, and adrenoleukodystrophy. Adding a condition to the federal recommended uniform screening panel requires nomination to the advisory committee on Heritable Disorders in Newborns and children. Currently, there is a pilot for fourteen conditions, including metachromatic leukodystrophy through the Screen Plus Study, which is led by Dr. Joseph Orsini, Deputy Director of the New York State Newborn Screening Program. This is important, MLD or metachromatic leukodystrophy, particularly in late infantile form, historically led to death before the age of 5. However, in 2024, the FDA approved a novel gene therapy for pre-symptomatic individuals, which will significantly improve motor function and survival benefits when administered early. From the Center for Community Health, I know Dr. McDonald just gave an update on H5N1. We have received positive tests in wild birds from fifty-six counties in New York State, including New York City since 2022. We know the virus is undoubtedly in wild birds throughout the state. This is not something unusual and not necessarily of concern. We have been working to advance the message to the public not to handle wild birds, including ill or dead birds, and encouraging people to report dead birds to the Department of Environmental Conservation, specifically when they find more than several. DOH has

provided guidance for local health departments following detections of H5N1 by commercial and backyard poultry flocks based on the degree of human exposures. We have not identified any H5N1 cases in humans to date. We provided updated information on our website and continue to work with local health to closely monitor the situation. The Department of Ag and Markets has not confirmed any cases in dairy cattle. Obviously, the landscape has changed in the past nine months or so for the consideration from dairy cattle to wild birds. We continue to monitor dairy cattle. There is also a continued monitoring of raw milk at milk processing facilities since the end of January. There have not been any detections of HPAI in raw milk at these facilities. Expanded access to vital nutrition programs for mothers and children. Governor Hochul announced in her 2025 State of the State commitment to expand access to the Special Supplemental Nutrition Program for Women, Infants, and Children. For more than fifty years, this program has been essential in promoting and safeguarding the health of women and children. Since 2020, special supplemental nutrition program has increased by nearly 25%. It currently serves more than 445,000 participants and counting, which is approximately 66% of the eligible population in New York State. Through this investment, the Governor plans to expand the programs reached to 70% of the eligible populations and increasing access to healthful foods and essential nutrition for thousands more women, infants, and children. We anticipate that the caseload will increase here, and the current rate is expected to reach 500,000 by September of 2026. With the hunger prevention and nutrition assistance or HIPNAP program and Nourish New York, HIPNAP and Nourish New York have proposed budgets in this year's state budget. Nourish New York is proposed to receive five million one-time executive, which is \$750,000 more than the prior year. Hunger Prevention and Nutrition Assistance Program is proposed to receive \$23.25 million in a one-time executive maintaining the funding level. It's important to note with the nutrition program that uncertainty about continued availability of federal funding for the programs is something that we are aware of and monitoring. Program areas like SNAP, it could affect our Division of Nutrition Programs. Federal funding is very important for WIC, child and adult care food programs, obesity prevention. HIPNAP is state funded. Update from the Office of Science and Technology, New York State Division of Science updated eight major public facing data dashboards and reports. We hope these dashboard applications will be useful tools for all our state and local partners. We would like to thank those who contributed data and support in the development update of these applications. The first of these is the Prevention Agenda Dashboard. It's been updated with the most recent data and is available on a link that's provided in your remarks. This is an interactive visual presentation of the most current tracking indicator data to track progress of New York State's Health Improvement Plan at state, county, and sub county levels. It serves as a key source for monitoring progress that communities around the state have made regarding the Prevention Agenda objectives. In addition, the Community Health Indicator Report was updated and is available. This dashboard interactively displays data for over 350 indicators at state and county level. It is designed to be a key resource for Community Health Needs Assessments, Community Health Improvement Plans and Community Service Plans. It's integral to local health departments and hospitals in their planning process. There is other six specific dashboards. One is on opioid data, asthma dashboard, maternal child health dashboard, leading causes of death dashboard, county health indicators by race and ethnicity report, and county and state zip code perinatal data profile report. From the Division of Public Health Infrastructure, interviews are underway for two director level vacancies. These include leadership in the Office of Local Health Services and Associate Director of the Division. The Public Health Infrastructure Grant, which is a CDC funded federal grant has entered year three and is working collaboratively across the Office of Public health to execute deliverables described in the CDC work plan. The community engagement and outreach unit and public health continuing education unit have increased

regional office co-location by hiring staff in each of the regional offices. The Office of Local Health Services will release the State Health Improvement Plan and the State Health Assessment this month which will support local health departments and hospital development of their community health improvement and service plans. The Office Of Local Health Services in collaboration with the Office of Health Equity and Human Rights launch the Prevention Agenda Inter Agency Task Force to strengthen implementation of the Prevention Agenda between 2025 and 2030. Task force members represent state agencies, are in leadership and liaise positions who can draw alignment of the Prevention Agenda to the work of their agencies. The division is also working collaboratively with the 1115 waiver team to draw alignment between the Prevention Agenda, social care networks, workforce investment organizations and the Public Health Infrastructure Grant. The New York State Public Health Corps. This is a program that I know we've spoken at this meeting before. It is unfortunately one of the programs that has been hit by the federal cuts. It was due to be funded through next year but is going to be prematurely terminated May 30th of year unless alternate funding source can be organized. The program launched its second phase in August 2024. In total, there's 199 hired fellows. These are placed in fifty-four host organizations across the state, including local health departments, state health department and several community-based organizations in forty-eight counties. There are currently 170 active fellows and twenty-nine inactive fellows. They continue to work on projects and participate in professional developmental activities. All fellows are either enrolled in a Cornell University or University of Miami professional certificate training program. Again, this is a hope that the fellowships will be able to contribute to the public health workforce going forward. Public Health Continuing Education Unit has made progress and continues to move work plan deliverables forward by piling leadership and management training, promoting public health capacity building programs with Cornell and SUNY Albany, developed a public health live webcast and completed training consultations with all the Office of Public Health centers and has begun to analyze data to identify core competency and training needs across the Office Of Public Health. Office of Local Health Services, the yearly state application consisting of local health department budget and responses to the program questions were due for submittal in February. The Office of Local Health Services working closely with the LHDs to ensure that these are accepted and approved so that state aid may be provided for the local health departments. From Public Health Infrastructure, Pathways to Public Health Internship Program kicked off recruitment for Summer internships. The program will feature fifteen public health internships across disciplines across New York State. It will also feature emerging leadership program, up-skilling new supervisors to lead interns, developing both supervisory and public health leadership skills. Academic partnership develop has kicked off their Spring Career Fair by partnering with regional offices to support college and community career fairs and promoting careers in public health. Finally, from the Center for Environmental Health, addressing childhood lead poisoning through protective rental inspections. This is a Public Health Law, 1377, which set the stage for the Center for Environmental Health to implement a proactive rental registry and identified communities of concern to combat childhood lead poisoning. The Center for Environmental health drafted regulations to administrate, coordinate, and enforce lead safety inspections and remediation of conditions conducive to lead poisoning. These regulations will require lead safety inspections of all pre-1980 multi-dwelling rental units in communities of the highest risk across the state starting in Fall 2025. Draft regulations were published in the state register. The public comment period ended in February. The department is currently reviewing the public comments and continues to work with the advisory committee on Lead Poisoning Prevention to ensure the regulations and associated guidance will support effective implementation of the program.

Mr. Kraut Thank you very much for a wide range of topics.

Mr. Kraut Are there any questions?

Mr. Robinson Thank you for the report. Very comprehensive.

Mr. Robinson You and Dr. McDonald alluded to the changing landscape at the federal level with regard to the collection of public health data, infectious disease data and how that is, at least it seems that we have less access to it. They're either not producing it or not sharing it. What is New York State doing to sort of replace that deficit... If anything, in order to sort of continue to monitor the public health of the state?

Dr. Whalen Thank you for that question.

Dr. Whalen There is a tremendous amount of work that's going on in the department right now both from a staffing perspective from analyzing the federal grants where cuts could occur and potential fiscal and staffing impacts and looking at data. One of the things when we were concerned about the transition the CDC website had been archived. Information that may have been taken down remains available to us. In addition, we're very carefully, you know, as I reported out from the Office of Science creating new data dashboards and making sure that we can have the information that our stakeholders need including the local health departments and the hospitals to make their plans based on data for community health improvement across the state.

Mr. Robinson Are there any efforts at sort of direct interstate collaborations to replace what's kind of disappearing at CDC and other settings?

Dr. Whalen We have had informal conversations with several state health departments across the country and discussing with them how we will kind of continue to move things along should there be additional challenges. I imagine that those conversations will be ramped up as the need occurs.

Mr. Robinson Thank you.

Mr. Kraut Any other questions?

Dr. Soffel Good morning. I have a comment and a question. I am delighted that the Prevention Agenda Interagency Task Force is happening, especially that you guys have reached out to the 1115 waiver team. I have been very troubled by the lack of communication. There's so much knowledge within the department. There hasn't been enough of the right hand and the left hand talking. I'm really delighted to see that. kudos to all of you. My question is on the WIC program, you said you're hoping that you'll be able to reach 70% of the eligible population. Obviously, many of us would like to see 100% of eligible population reach. How does that 65, currently 70 potential, who decides who gets in and who doesn't get in?

Dr. Whalen I think that the goal is obviously to get everybody in that needs to get in. A lot of what has been the blockage here has been administrative to be able to process applications as they come in. I don't think that there's a hierarchical decision of someone gets in and someone doesn't get in other than utilizing the criteria that we have. It is just expanding the ability to process more of these applications.

Dr. Soffel You don't have a wait list?

Dr. Whalen I'm not aware that we do. I can check on that.

Mr. Kraut Thanks so much, Dr. Whalen.

Mr. Kraut I'm now going to turn to Dr. Fish to give a report on the Office of Primary Care and Health Systems Management.

Dr. Fish Good morning, everyone. Doug Fish, Deputy Commissioner for the Office of Health Care Delivery. I'll be reporting out, as Mr. Kraut said, on the Office of Primary Care Health Systems Management. April is Donate Life Month. It's a time to raise awareness about organ, eye, and tissue donation and encourage registration and honor our donors. Yesterday, the department had a very productive meeting of our Transplant Council, which is in Public Health Law, so this council advises and makes recommendations to the Commissioner of Health on matters related to organ donation, procurement, bank storage facilities and other matters. It was a very, very productive meeting that we had. To follow on Commissioner McDonald's remarks related to federal actions, on February 18th of this year, the department issued a Dear Administrator Letter on continuity of care in response to the Presidential actions concerning gender affirming care. This communication serves as reminders to our hospitals and diagnostic and treatment centers must ensure equitable continuity of care for patients whose care is discontinued or paused in any way. On March 19th, we issued a third letter, patient abandonment and equity in care as guidance to hospitals and diagnostic and treatment centers regarding, one, meeting the requirements, a professional licensure, as well as the Emergency Medical Treatment and Active Labor Act, what we know of as EMTALA, two, holding a license to operate a hospital in New York State, and three, regarding participating in federal and state reimbursement programs. This Dear Administrator Letter serves as a reminder that healthcare providers must treat all patients equally when seeking care and treatment. On our hospital capacity direct access rollout that I mentioned last time as a reminder. This is our health data modernization effort to relieve hospitals of manual reporting requirements by automating the submission of data to the department. We're near completion of this project to build out and onboard our hospitals for this automated reporting of data such as their daily bed census, ICU bed census things were very, very relevant and helpful during the pandemic. We anticipate this final group of hospitals being onboarded within the next few weeks to a month. Hospital at home, just thought I would mention this because the Centers for Medicare and Medicaid Services extended the Acute Hospital Care at Home Program through the end of September of 2025 with the extension of the federal budget. CMS launched this Hospital Without Walls program in March of 2020 under the authority of the 1135 Social Security Act. It was extended again through the Consolidated Appropriations Act of 2023. This act also required CMS to conduct a study to evaluate several aspects of the Acute Hospital Care at Home Initiative. This was published on September 30th. Reported on findings of early lessons the patient experience, quality and cost of care with generally positive findings. Lastly, just as a reminder about our state emergency medical services, as our team has been moving through the next phase of creating the Emergency Medical Services task force and are currently onboarding staff to continue operation of our state operation surge center which is open 24-7 for our hospitals on health care facilities across the state. With that I'll conclude and happy to take questions.

Mr. Kraut Thanks so much, Dr. Fish.

Mr. Kraut Are there any questions for Dr. Fish?

Mr. Kraut Thank you so much for your report.

Mr. Kraut I'm now going to turn to, we're going to hear four of our committee reports. The first of whom is going to be led by Dr. Torres, who's going to give us a report on the Public Health Committee activities of the council.

Dr. Torres Good morning. Dr. Whalen, thank you for the collaboration. On February 18, the New York State Department of Health's Prevention Agenda team updated the Public Health Committee on the progress of the 2025 to 2030 New York State Prevention Agenda, which has a new framework incorporating the social determinants of health consistent with the CDC's Healthy People 2030 Initiative. This includes five domains; economic stability, social and community context, neighborhood and built environment, health care access and quality, including twenty-four statewide priorities and eighty-eight measurable objectives and indicators with an overarching goal to reduce disparities and inequities using evidence-informed interventions with ability to track progress over time. The State Health Assessment and the State Health Improvement Plan documents have been finalized and are set for release, immediate release. New to this cycle of planning is establishment of an interagency task force. The Social Determinants of Health Interagency Work Group which will be comprised by in part members of the Establish Interagency Task Force of Health Equity and Diversity and Inclusion. These are experts in social determinants of health, health equity, health disparities, economics, and vulnerable populations. The purpose of the work group will be to lead collaborative efforts at the state level. The Prevention Agenda team has also administered a survey on cross-sector coordination to identify external organizations outside New State Department of Health. That plan to support the Prevention Agenda priorities and goals to engage additional organizations, strengthen coordination and track implementation efforts. Hospital community benefit has also been discussed as an important potential mechanism to fund efforts of the Prevention Agenda. It was reported out that the New York State Fiscal Year 2026 Executive Budget includes a community benefit spending proposal as an amendment to Article 7 legislation that would require hospitals to report spending and how this funding aligns with efforts, including the Prevention Agenda. The New York State Prevention Agenda Dashboard will be updated to reflect the new Prevention Agenda later this year. Post-release of the SHA and the SHIP will anticipate community health assessments, community health improvement plans, and community service plans from local health departments and hospitals throughout our great state.

Mr. Kraut Thanks, Dr. Torres.

Mr. Kraut Any questions for Dr. Torres or any of the committee members want to make a comment?

Mr. Kraut Thanks so much, Dr Torres.

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

Dr. Rugge Thank you very much.

Dr. Rugge The Planning Committee met yesterday afternoon. We're pleased to see numerous council members who had not been officially on this committee. The expectation now, of course is each of them join all of our sessions for the next topic, starting with

Marcus. This meeting represented for us a refresh start. It is not a fresh start. The Planning Committee has been active for a long time. Our charge, if you will, is contained in statutory language regarding our responsibilities to think and make recommendations regarding our ever-changing healthcare delivery system. In response to that, this committee, the members of the committee brought forward lots of policy issues that really needed to be looked at and investigated, again, in this fast-changing world of ours, both delivery of care and payment for care. I like to believe that this stimulated our leaders in DOH, Dr. Jean Heslin, Ms. Jackie Sheltry to really look at. How can we assess top priorities for now that may also serve as a model for how we proceed? The recommendation was to take a look at PCI, percutaneous coronary interventions. Not just doing cardiac cast to see what's there, but to be prepared to fix the problems, especially coronary artery problems. As we did that, we realized that the responsibility is to look carefully at the safety for patients, the outcomes for patients in this kind of setting, and also understand and review the cost effectiveness of moving yet another service from the inpatient setting to the ambulatory setting. As we know, many services in the ambulatory setting have now moved into the home setting. We need to keep up and sometimes help to stimulate those advantages. The presentations that we received yesterday were extremely helpful, one on quality and analytics from our DOH specialists and also from the Cardiac Advisory Committee. Another presentation was given regarding reimbursement overview for PCI. Now, after a pretty vigorous discussion, we feel prepared to undertake a three-part process. Phase One, more learning for us so that we are truly educated about the process and the implications of doing all this on an ambulatory basis. Number two make sure that we receive input from key stakeholders and other experts, and of course Phase Two and Phase One are very closely linked. All that should then lead to our ability as a committee to develop an understanding and then develop recommendations for how to go forward, what kind of standards should be, what are the guidelines that every program needs, etc. Those recommendations would then go as appropriate to the Codes Committee, and also, of course, to the council for review, improvement, and adoption. We then concluded with a discussion about how do we go from here? What kind of meetings do we need? How often? How long should they be? All that is now in the works. Really do feel that this is an introductory session, introductory course in the larger issue, of course of this movement of care from one setting to another. Hopefully, we'll set an example of how to do this kind of work and produce the kind of outcomes we hope for, which are good and helpful to all. Thank you.

Mr. Kraut Thank you very much, Dr. Rugge. I want to just thank you and Ann Monroe for chairing the committee. I don't think Dr. Rugge was joking when he said if anybody is attending the meeting, you'll now become a member of the committee. So, if you're not and you'd like to be, you will just let us know. We certainly want to encourage everybody to attend. You're certainly able to participate and contribute to the conversation.

Dr. Rugge To be clear, that was a serious joke.

All (Laughing)

Mr. Kraut It's a serious joke, but we already had one person who came forward and we will be appointing that person.

Mr. Kraut Any questions for Dr. Rugge or any members of the committee who wanted to make any comments on it?

Mr. Kraut Thank you.

Mr. Kraut I'm going to turn now to Mr. Holt, who will give us a report on the Codes, Regulation and Legislation committee.

Mr. Holt Good morning. At the April 10th, 2025, meeting of the Committee on Codes, Regulations, and Legislation, the committee reviewed and voted to recommend for adoption the following regulation for approval before the full council. Amendment of Section 405.45 of Title X, Trauma Centers and Nurse-Reviewer. Mr. Greenberg of the Department of Health presented the Trauma Center's Nurse-reviewer proposal regulation to the Committee for adoption, and they're available to the council should there be any questions from the council or the members. I move the adoption of this regulation.

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

Mr. Kraut May I have second?

Mr. Kraut Second Dr. Berliner.

Mr. Kraut Are there any questions from the council members?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Holt Following regulation, amendment to Section 405.4 of the Title 10 NYCRR, 12-week rule for foreign medical school graduates and limited permit allowances was presented to the council for information only and will be presented to the committee and the full Public Health and Health Planning Council for adaption at a later date. This completes the agenda of the Codes, Regulations and Legislation committee.

Mr. Kraut Thanks very much, Mr. Holt.

Mr. Kraut I'm now going to turn to Mr. Robinson to give the report on the actions of the Establishment and Project Review Committee.

Mr. Robinson Thank you, Mr. Kraut.

Mr. Robinson As Mr. Kraut mentioned earlier, I do intend to batch these applications, so please weigh in if you want to have an application pulled out and addressed separately. Beginning with this first category, which is applications recommended for approval with no issues or recusals, abstentions or interests, I will batch the following applications. Application 251013C, Montefiore Mount Vernon Hospital in Westchester County to perform renovations to upgrade and expand the Emergency Department, Surgical Department, and Outpatient Wellness Center. The department and the committee recommended approval with conditions and contingencies. Application 242333C, Endoscopy Center of Western New York LLC in Erie County. This is to certify a single specialty extension clinic for

gastroenterology to be constructed at 250 Windward Road in Orchard Park and transferring 11.035% membership interest from a current member LLC to another current member LLC and add three members to that member LLC. Both the department and the committee are recommending approval with conditions and contingencies with an expiration of the operating certificate, five years from the date of issuance. Application 251016C, Markey Certified Home Care LLC in Albany County. This is to acquire the certified home health care or CHAA operated by Community Health Center of St. Mary's Health Care and Nathan Litour Hospital and add additional counties and services. This amends an out earlier and supersedes an earlier application numbers 241119. The department recommends approval with a condition as did the committee. I move that batch.

Mr. Kraut I have a motion by Mr. Robinson.

Mr. Kraut I have second Dr. Torres.

Mr. Kraut Are there any questions on any one of these applications?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson This next application is separate 242268C, Hospital for Special Surgery in New York noting an interest by Dr. Lim to construct Article 28 space in a new twelve story building on the main campus to include imaging services and inpatient beds with no change to total certified beds. This to amends and super season earlier CON, this one is number 191311. Department and committee recommend approval with conditions and contingencies. I so move.

Mr. Kraut I have a motion by Mr. Robinson.

Mr. Kraut A second by Dr. Berliner.

Mr. Kraut Any questions on this application?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Motion carries.

Mr. Robinson This is 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, who remains. This is to certify eleven bone marrow transplant beds and perform renovations to create a new bone marrow transplants unit.

Mr. Robinson May I have a motion?

Mr. Robinson Dr. Berliner.

Mr. Robinson Second, Mr. Thomas.

Mr. Robinson I'll call the question.

Mr. Robinson All in favor?

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Mr. Robinson Have Mr. Kraut return.

Mr. Robinson This next batch involves applications recommended for approval. This is where I'm supposed to be. Application 222053E, VS Servicer at Beacon LLC doing business as the Taconic Rehabilitation and Nursing at Beacons in Dutchess County. This is establishing VS Servicer at Beacon LLC as the new operator of Taconic Rehabilitation and Nursing at Beacon, formerly known as Wingate at Beacon, a 160-bed residential healthcare facility at 10 Hastings Drive in Beacon. Department and committee recommend approval with a condition and contingencies. Application 222054E, VS Servicer at Fishkill LLC doing business as Taconic Rehabilitation and Nursing at Hopewell in Dutchess County. This is to establish VS Servicer at Fishkill LLC as the new operator of Taconic Rehabilitation and Nursing at Hopewell, formerly known as Wingate of Dutchess, a 160-bed residential health care facility at 3 Summit Court in Fishkill. Here the department recommends approval with a condition contingency as did the committee. Application 222055E, VS Servicer at Ulster LLC doing business at Taconic Rehabilitation and Nursing at Ulster and Ulster County. Establishing VS Servicer at Ulster LLC is the new operator of Taconic Rehabilitation and Nursing at Ulster, formerly known as Wingate of Ulster, at 1 Wingate Way, Highland. The department, as did the committee recommends approval with a condition and contingency. Application 231043E, Meadowbrook Operating LLC doing business as Meadow Brook Healthcare in Clinton County, establishing Meadowbrook Operating LLC as the new operator of Meadowbrook Healthcare, an 87-bed residential health care facility currently operated by CGSR Inc at 54 Prospect Avenue in Plattsburgh. The department and the committee recommend approval with a condition and contingencies as well. Application 241267E, Morningstar Residential Care Center in Oswego County, transferring 10% ownership interest from one existing shareholder to one new shareholder. Both the department and the committee recommend approval with conditions and a contingency. I move the batch.

Mr. Kraut I have a motion, Dr. Torres.

Mr. Kraut Second, Dr Watkins.

Mr. Kraut Any questions on any of these applications?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson Now, batching certificates, a certificate of amendment of the certificate of incorporation for the Bethel Springvale Nursing Home, Inc. Department and committee recommend approval. Certificate of dissolution for the International Center for the Disabled doing business as Institute for Career Development. Both department and committee recommended approval. VNS Choice Community Care, the department and committee recommend approval. Presbyterian Senior Care of Western New York department and committee recommend approval. I move the batch.

Mr. Kraut I have a motion.

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

Mr. Kraut Any questions on these certificates?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson It takes these individually now 242292E, Crystal Run Ambulatory Surgery Center of Middletown and Orange County noting an interest in abstention by Dr. Friedrich transferring a 40.10 membership interest in the center to eighteen individual physician members. Department and committee recommend approval with a condition. I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have second, Dr. Berliner.

Mr. Kraut We're not batching these, right, or we're not batch any?

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson These next two are batched. 251014E, Atrium Endoscopy in Suffolk County noting an interest by Mr. Kraut to establish and construct a single specialty ambulatory surgery center for gastroenterology at 775 Park Avenue and Huntington Station. Department and committee recommend approval with conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance. 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 Maspeth Avenue in Brooklyn. Note that there are revisions to the application on Pages 1 and 2 under the financial summary and Page 13 under capability and feasibility regarding the project's funding. With that said, the department and the committee recommend approval with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance. I move that batch.

Mr. Kraut I have a motion.

Mr. Kraut I have second, Dr. Torres.

Mr. Kraut Any questions on these applications?

Mr. Kraut Hearing none, all those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson These will run individually now. 242-263B, Medical Center of Williamsburg in Kings County, an interest by Dr. Lim, to establish and construct a Diagnostic and Treatment Center to be located at 1 Maspeth Avenue in Brooklyn, noting again a revision to the application made on Page 1 under the financial summary, and Page 11 under Capability and Feasibility regarding the project's funding. The department and the committee recommend approval with conditions and contingencies. I so move.

Mr. Kraut I have a motion.

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

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson Again, I'm going to be taking applications individually here, 231220E, CLRNK Operating LLC doing business as Clinton County Nursing Home in Clinton

County. I want to note here that this application was opposed by Mr. La Rue and Ms. Mazzola. Did I say it right? Thank you. Ms. Monroe abstained. This is an application to establish CLRNC Operating LLC as the new operator of Clinton County Nursing Home an eighty-bed residential health care facility currently operated by Clinton County as 16 Flynn Avenue in Plattsburgh. The department recommends a condition approval with a condition and contingencies and as noted the committee recommended approval with the condition and contingencies with two committee members opposed and one abstaining. I make the motion.

Mr. Kraut I have a motion.

Mr. Kraut I have a second Dr. Torres.

Mr. Kraut Would any committee member have any questions or want to make any statements about this?

Mr. La Rue Good morning. Scott La Rue, member of the council. First, I'd say that my comments are going to be relevant to all three applications I voted against. It's more important, the theme that I think I'm sharing than these specific applications. I certainly don't mean to search the proposed owners of this, rather identify what I think are flaws in our character and competency revisions that we did as well as structural issues with the funding of the nursing home. There are several nursing home applications before the council today for the first time in a while. I assume that's partially because of the pandemic, partially due to the changes made to the character and competency review. From my perspective, these changes have positively disrupted the historical approval process and has shed light on opportunities to improve the outcomes for those that we serve. As with any new process, given sufficient time, those who use the system will find a way to work it to achieve their desired outcome. With today's applications, I'm concerned what I see as a pattern across several applications, having a new owner being presented for approval with no prior ownership history, and at the same time a tangential relationship to an entity with a long history of nursing home ownership, resulting in my concern that this may be a way to avoid the criteria we established for character and competency review. Additionally, there are applications before us today for small nursing homes with less than 100 beds, and I have serious questions regarding the financial performance included in the applications. I believe it is impossible to operate a nursing home of this size profitably under existing Medicaid reimbursement levels and meet the requirements of the New York State staffing mandate of 3.5 hours per patient day and have an application for an eighty-bed nursing home, staffing at 3.5 hours with at least 75% Medicaid and a 25% combination of managed care private pay and Medicare. I believe it is just not financially feasible. The only way this becomes feasible is to either not meet the 75 percent Medicaid requirement or not meet 3.5 hours per patient per day or to sacrifice either quality or compensation and benefits for the staff. There is a structural reimbursement problem for nursing homes, which is why there is a continued trend of not-for-profit selling to for-profit ownership or the closing of homes. Most recently, the reduction in the operation of licensed beds in the state. When I first joined the Public Health Council, I shared that I thought long-term care was transforming due to inadequate reimbursement. I did not believe anyone would be happy with the outcome at the end of this transformation. Unfortunately, I think today we're seeing those consequences. If we solve these issues, there would be a line of qualified applicants who want to obtain ownership of these homes and operate them with superior quality and financial success. Approving particular applications that fall into these two categories without reform ignores the root cause of the underlying problem and perpetuates the existing problem. For these reasons, I voted no

on specific applications being presented today. I look forward to working with the council and the Department of Health and the legislature to continue improving the review process for nursing homes. I hope the legislative branches will acknowledge this crisis and adequately fund the Medicaid program for nursing home.

Mr. Kraut Thanks, Mr. La Rue.

Mr. Kraut Anybody else have a question or a comment?

Mr. Robinson I think the committee really fully understood Mr. La Rue's comments here. I think and respect the vote that he took on this and the other applications. I do think that there is a need for us to take a new look at these processes both in terms of character and competence and financial feasibility as we look at our own processes within the department and then the way the Public Health Council essentially oversees that process, but you're also correct that some of this goes beyond the scope of the department and the council and requires legislative solutions. Our response was that we didn't want to act against the applications that were before us because at this point, there is, those options aren't available, but I think it does call for us to initiate a process both within the department and the town.

Mr. Kraut I think we agreed on doing that and I'll come back to that at the end.

Mr. Robinson That was my comment.

Mr. Kraut I'm going to mention what we agreed to.

Ms. Mazzacco Hi. Michelle Mazzacco, member of the council. I think that what Mr. La Rue articulated was very well said. I agree with everything that he shared. What I struggle with and still struggle with today and why I voted against those applications was we clearly conveyed in the character and competence regulations what our intent was. The applicant came before us transparently stated that because of that they changed how they applied in order to get through on a technicality. I can't ethically support that type of an application or process.

Mr. Kraut For those who weren't at the council, we had obviously, you've got a flavor of a good substantive conversation. I think what we've come out at the end of this is we're going to separate the policy issues with funding with the process issues that are under the purview of the council. We'll put a subcommittee together, or an Ad Hoc Committee, I guess of asking Mr. La Rue and Mr. Holt, given their experience to sit and we'll invite other members of the council who are so interested to sit with DOH staff and take a look at the issues that this raised from a process of one, how do we invite in new ownership if you can only approve people that are already operating nursing homes and we have issues with some of those groups, how do we invite in and permit new people to step forward who may certainly have a skill and the individual that appeared here, in my mind, had significant years of experience. As Ms. Mazzacco just stated, you know, there were certain issues that were brought because even though, and I believe she will act independently, she's still an employee of the group that couldn't qualify. We have to figure out how do we do that, the financial issues, and then I think it's just a discussion about process of what we look at, the criteria, and how applicants prepare the application, frankly, that would respond to those things, maybe a little more clarity on our expectations. I'm not going to go through the list of agenda, but I will leave it up to the two of you working with the department staff to essentially set up some meetings, notify us of doing them. If any else

wants to join, we'll open that up. Obviously, that to some degree has to get open. I think we could do an educational session and then open that to the public after you have some clarity about how you're going to approach that. That's how we're going to deal with it. I was moved by the comments. I'll just say particularly on the application before us. This is a county nursing home and of a county that is going to divest, wants to divest itself of that financial obligation. At the same time, has members of county government came here, went through the process of how they selected the applicant, and also made a point of the importance of maintaining access to those beds in their community. Given the challenges of this application, I and I think several others voted yes. We do have a motion for approval. You've heard the whole story. Unless there's any other questions, would like to call the vote.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Mr. La Rue, Ms. Mazzacco and Ms. Farrell.

Mr. Kraut We have three opposed.

Mr. Kraut There's no abstaining.

Dr. Rugge Yes.

Mr. Kraut Oh, you're abstaining.

Dr. Rugge I'm abstaining.

Mr. Kraut Dr. Rugge and Dr. Soffel is abstaining, and then we had three no votes. The motion doesn't pass.

Mr. Kraut What you have in fact, now this is not a recommendation. This is an establishment. Those of you who abstained, you have essentially said the nursing home gets closed.

Dr. Rugge On those conditions.

Mr. Kraut I just want you to be clear about what an abstention meant for this community.

Dr. Rugge Given that information about the vote, I would change to a yes. I would like the ministry to reflect this is reluctantly so.

Mr. Kraut I understand.

Mr. Kraut We are still one vote short of approval. I need fourteen affirmative votes.

Mr. Kraut Do I have to call the Commissioner to return?

Mr. Kraut We're going to do a roll call vote because the shifting of the voting because they're already doing this.

Mr. Kraut Go ahead and do a roll call vote.

Ms. Leonard Dr. Berliner?

Dr. Berliner Abstain.

Ms. Leonard Dr. Eisenstein?

Dr. Eisenstein I vote in favor.

Ms. Leonard Dr. Friedrich?

Ms. Leonard Mr. Holt?

Ms. Leonard Mr. La Rue?

Ms. Leonard Dr. Lim?

Ms. Leonard Ms. Mazzacco?

Ms. Leonard Mr. Robinson?

Mr. Robinson Yes.

Ms. Leonard Dr. Rugge?

Dr. Rugge Reluctantly, yes.

Ms. Leonard Dr. Soffel?

Dr. Soffel Abstain.

Ms. Leonard Mr. Thomas?

Mr. Thomas Yes.

Ms. Leonard Dr. Torres?

Dr. Torres Yes.

Ms. Leonard Dr. Watkins?

Dr. Watkins Yes.

Mr. Kraut I'll cast a vote.

Mr. Kraut Let me state how many affirmative?

Mr. Kraut There are thirteen affirmative votes, there are three no votes, and how many abstentions? Three abstentions. I'm just perfecting the record.

Mr. Kraut How many affirmative votes?

Mr. Kraut Use the use the microphone so I can hear it.

Mr. Kraut We need how many affirmative votes for this to pass?

Mr. Kraut We are missing one vote. The motion fails.

Mr. Kraut I'd like to consider an alternative motion to bring this back for consideration at the next council meeting, the next full council. We do not have all the council members present. They can hear the discussion again. If we had Dr. McDonald in the room today we would have had the fourteenth vote.

Mr. Kraut I'm just going to go off to talk to our lawyer.

Mr. Kraut I'm informed we have all the council members so I'm going to make another motion to disapprove the application. We're doing this for the record. You can vote the same way.

Mr. Kraut Dr. Berliner is going to second.

Mr. Kraut We're going to have another vote to disapprove. If you voted yes for the other one, you might want to vote no on this one or not abstain.

Dr. Rugge Can you explain the rationale for this?

Mr. Kraut I'm perfecting the record, the applicant has certain rights, and I'm asking everybody to declare their vote for the record as the applicant pursues all of the rights they have to seek an approval in the appellate hearings.

Dr. Rugge Appellate hearings are conducted by?

Mr. Kraut Those are Article 78 hearings. Am I correct? Any action of state as we are in this matter, because we are the final say, not the Commissioner is subject to review as those of you who have been on the council for years know, those periodically come forward and I'll just say shining star.

Dr. Rugge Again, just to be clear, what is the implication of a majority voting no?

Mr. Kraut Well, I'm just getting clear that there may not be a disapproval. The applicant has certain rights. That's all I'm trying to be clear about. The applicant has rights and the clarity. We need to show that the council has been unable to get fourteen affirmative votes in a meeting that there's a legal quorum for. There is a motion to disapprove the application.

Mr. Kraut All those in favor of disapproving the application, we're going to do a roll call vote.

Ms. Leonard Dr. Berliner?

Ms. Leonard Dr. Eisenstein?

Dr. Eisenstein No.

Mr. La Rue I do want to grant the applicant every opportunity, so I support the disapproval. Did I vote the right way there?

All (Laughing)

Dr. Rugge Once again, I think not to the fault of anybody or any committee. In this complex situation, we were given two bad options. Can I abstain?

Mr. Kraut You can't ask us. You can do whatever you want.

Dr. Rugge I abstain.

Ms. Leonard Ms. Soto?

Ms. Soto No.

Ms. Leonard Mr. Thomas?

Mr. Thomas No.

Ms. Leonard Dr. Torres?

Dr. Torres No.

Ms. Leonard Dr. Watkins?

Dr. Watkins No.

Mr. Kraut Well, I'll vote no.

Mr. Kraut Four affirmatives, twelve nays, and two abstention. The motion fails.

Mr. Kraut We'll move on with the agenda.

Mr. La Rue Yes. I was attempting to vote consistent with what you wanted to do. I wanted the applicant to have every opportunity.

Mr. Kraut Well, they will. They still do. We wouldn't have had enough. Scott, it's fine.

Mr. Robinson Application 233241E, WRNC Operating LLC doing business as Wells Rehabilitation and Nursing in Fulton County. Noting on this application at the committee, Mr. La Rue and Ms. Mazzacco oppose the application and Ms. Monroe abstained. This is to establish WRNC Operating LLC as the new operator of Wells Rehabilitation and Nursing Center, a 100-bed residential healthcare facility currently operated by Wells Nursing Home Inc at 201 West Madison Avenue in Johnstown. The department recommends approval with conditions and contingencies. Again, as I noted, the committee voted approval also with conditions and contingencies with two members opposed and one member abstaining. I move the application.

Mr. Kraut I have a motion.

Mr. Kraut May I have second?

Mr. Kraut Dr. Berliner.

Mr. Kraut Any comments on this application?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Anybody opposed?

Mr. Kraut Three opposing.

Mr. Kraut Any abstentions?

Mr. Kraut Motion fails.

Mr. Robinson We will try to make a motion for disapproval now, and I make that motion.

Mr. Kraut I have a motion to disapprove the application.

Mr. Kraut Let's get a second before we open it up.

Mr. Kraut Dr. Berliner.

Mr. Kraut Mr. Thomas.

Mr. Kraut Oh, you were just seconding. I thought you had a question.

Mr. Kraut I have a motion to disapprove the application.

Mr. Kraut Let's do a roll call vote, please.

Ms. Leonard Dr. Berliner?

Dr. Berliner Yes.

Ms. Leonard Dr. Eisenstein?

Dr. Eisenstein No.

Ms. Leonard Mr. Holt?

Mr. Holt No.

Ms. Leonard Mr. La Rue?

Mr. La Rue No.

Ms. Leonard Dr. Lim?

Ms. Leonard Ms. Mazzacco?

Ms. Leonard Mr. Perry?

Ms. Leonard Mr. Robinson?

Mr. Robinson No.

Ms. Leonard Dr. Rugge?

Dr. Rugge Once again, I abstain.

Mr. Kraut We have three yays, thirteen nays, and three abstentions.

Mr. Robinson Let's move on. Application 202251E, Hoosick Falls Center LLC doing business as Hoosick Falls Rehabilitation and Nursing Center in Rensselaer County. This again is an application at committee level that was opposed by Mr. La Rue and Ms. Mazzacco and Dr. Torres, and this application establishes Hoosick Falls Center LLC is the new operator of the Center for Nursing and Rehabilitation at Hoosick Falls, which is an eighty-two-bed residential healthcare facility located at 21 Danforth Street in Hoosick Falls. The department recommends approval with a condition and contingencies. The committee, as I noted, voted for approval with a conditioning contingencies with three members opposed. I move the application.

Mr. Kraut I have a motion.

Mr. Kraut May I have second?

Mr. Kraut Dr. Torres.

Mr. Kraut Any comments on this application?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut I have four people opposed and abstain. I have three people abstaining. The motion does not carry.

Mr. Kraut Let's go through it again.

Mr. Robinson I will now move to oppose the application, motion for disapproval. Disapproval, thank you.

Mr. Kraut I have a motion for disapproval.

Mr. Kraut May I have a second?

Mr. Kraut Mr. Thomas.

Mr. Kraut Let's do a roll call vote just to be clear on the disapproval.

Ms. Leonard Dr. Berliner?

Dr. Berliner Yes.

Ms. Leonard Dr. Eisenstein?

Dr. Eisenstein No.

Ms. Leonard Ms. Farrell?

Ms. Farrell Yes.

Ms. Leonard Dr. Friedrich?

Dr. Friedrich No.

Ms. Leonard Mr. Holt?

Mr. Holt No.

Ms. Leonard Mr. La Rue?

Mr. La Rue No.

Ms. Leonard Dr. Lim?

Dr. Lim No.

Ms. Leonard Ms. Mazzacco?

Ms. Mazzacco No.

Ms. Leonard Mr. Perry?

Mr. Perry No.

Ms. Leonard Mr. Robinson?

Mr. Robinson No.

Ms. Leonard Dr. Rugge?

Dr. Rugge Abstain.

Ms. Leonard Dr. Soffel?

Dr. Soffel Abstain.

Ms. Leonard Ms. Soto?

Ms. Soto No.

Ms. Leonard Mr. Thomas?

Mr. Thomas No.

Ms. Leonard Dr. Torres?

Dr. Torres No.

Ms. Leonard Dr. Watkins?

Dr. Watkins No.

Mr. Kraut Just give me the numbers.

Ms. Leonard Same numbers.

Mr. Kraut The motion fails.

Mr. Robinson Let's continue. Next application is 242133E, Delmar SNF Operations Associates LLC doing business as Delmar Center for Rehabilitation and Nursing. This is in Albany County. Ms. Mazzacco opposed the application at the committee level. This is to establish Delmar SNF Operations Associations, LLC as the new operator of Bethlehem Commons Care Center, a 120-bed residential health care facility currently operated by Good Samaritan Lutheran Health Care Center Inc at 125 Rockefeller Road in Delmar. The department, as I noted, recommended approval with a condition and contingencies. The committee did as well with one member opposed. I move the application.

Mr. Kraut I have a motion.

Mr. Kraut I have second, Dr. Torres.

Mr. Kraut Any questions on this?

Dr. Soffel I don't mean to put you on the spot, Mr. La Rue, but can you explain what's different about this application than the previous three that led you to change your vote during the committee?

Mr. La Rue Not putting me on the spot at all. The larger, I felt that the financial feasibility of this home had a more probable chance of success.

Mr. Kraut Any other questions?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Ms. Mazzacco?

Mr. Kraut Abstentions?

Mr. Kraut The motion passes.

Mr. Robinson That concludes the very interesting report from the Establishment of Project Review Committee.

Mr. Robinson I'll turn it back to the Chair.

Mr. Kraut Yes, I'm going to make some comments, but go ahead.

Dr. Eisenstein We heard some compelling comments from Mr. La Rue, Ms. Mazzacco. When this goes forward, could we perhaps just like to really know how this is going to impact the residents, the residents of the nursing home and the community as a whole, just maybe to give broader context? Because I think the comments were important and need to be taken into account. I also want to understand what the impact of this vote is, if possible.

Mr. Kraut I am going to depending on how this gets publicly reported, I would say this is either a cry for help, but we're in a no-win situation. Unfortunately, we have patients in the middle of an issue where there is a desperate need for nursing home beds. We have a distrust of for-profit owners. We have a decreasing pool of not-for-profit organizations that can operate nursing homes. No attention is being paid from the legislature as best as I could see. What are the options for current owners? Bankruptcy? Diminished services? You know, potential quality? I don't know. It's not fair. I mean, our job is to try to move these things forward. As much as it distresses me that we couldn't come to consensus here, and I'll come back to our process. I don't know. Maybe some good will come out of this in that we've turned down these applications. I don't see it that way. It's not immediately clear to me. I think we've created some unintended consequences that unfortunately it's going to be patients that are going to suffer, not the political process necessarily. The second issue I'll make a point here of is that you got a chance of hearing some of the reasons why Mr. La Rue and the others voted against it. Unfortunately, in this venue, you did not have the same opportunity that convinced the majority of us who approved this application to come here to say why you should have approved it. You had to vote the way you intended to. Typically, we've never used an abstention here in the last six years. We do not include it. I mean, it's available, but we have as an organization and maybe for the newer members we didn't do that properly at orientation. You rarely use it. Only when you cannot have the facts to make a decision. Sometimes you rely on the others who were present for those facts but be that as it may didn't have the opportunity. I would suggest that when we are having nursing home applications at the Establishment Project Review, I would like all of the members to be present for the discussion so you're affording the applicants the same opportunities that the rest of us have heard so you can make a decision. You voted the way you had to vote. There was no problem with that in my mind. It's just that it's unfortunate you couldn't have heard the arguments of why you should have approved this, and that might have been compelling. That's our process and we have to live with the process we have.

Mr. Kraut Yes, Dr. Rugge.

Dr. Rugge My rationale is that we have two bad choices, not allowing the switch to for-profits or going to certain organizations that deliver unacceptable care. My hope is that this block will call the legislature's attention to this issue. Be it by changing the reimbursement rate, changing the qualifications. If we proceed with this, I'm afraid we're going downhill to the destruction of long-term care in this state.

Mr. Kraut I don't disagree with what you've said. I would just say that unfortunately we were the final word. It is our job to make hard decisions. I'm hoping what you said in fact happens. I'm going to hope for that. While we're hoping, we have people in these nursing home beds that we have to be very concerned about the availability. That's all.

Dr. Rugge We have two bad choices and put at risk a few long-term care beds. We're trying to save the nursing homes across the state.

Mr. Kraut But in all fairness, you had the government of Clinton County who did due diligence, met with different people, and they even said they didn't have great choices. They made the best choice they could in the interest of patient care.

Dr. Rugge Yes, because we have an unacceptable environment.

Mr. Kraut The majority of the members of the Establishment Committee did likewise. We chose today not to do that. That's all I'm saying.

Ms. Soto My question is committee process. I noted that in one of the applications, three of the members opposed it, but it was contingently approved. What is the process? I mean, when we went back and we voted, it was at the majority that voted yes or no. When I see three oppositions out of how many?

Mr. Kraut The committee was... How many members was the committee? Eighteen members of the committee, fifteen voted affirmatively, or whoever was present voted. I would also argue that the Department of Health recommended that we should approve this. We needed how many? We needed eight. We have fifteen members of EPRC. We need eight for an approval. We got twelve votes, I believe. I'll confirm that. The majority of those presidents voted for it, and we had enough affirmative votes for the application to move forward based on the recommendation also of the Department of Health suggesting it was an approvable application.

Dr. Watkins Well, my question is, coming from a county that owns two nursing homes, and we are really in a sticky situation when it comes to reimbursement for these nursing homes, Medicaid, low reimbursement, and of course, private pay, low reimbursement as well. The impact hearing from another county nursing home that is having these same difficulties but have found a buyer. What happens? They no longer accept patients into the nursing home and the nursing home closes down because they can't sell it. They'll just close it.

Mr. Kraut We were told that if we didn't approve this application, the county would close the nursing home. That's why we had partly, at least I voted in part. Now remember, we just voted down three applications. I'm talking about Clinton County, but I'm not talking about the other two. Just to be clear, we're doing this more for education and clarification. The vote is the vote. I'm not going backwards right now.

Dr. Rugge Once again, I see this as an effort to call the attention of the ultimate decision makers, the legislature. We have an unacceptable environment and either choice is unacceptable. We need change. We can't do that change. We should perhaps make a formal statement to the legislature that we need change.

Mr. Kraut I think you just made a formal statement.

Dr. Rugge Good.

Mr. Kraut You voted down three nursing home applications.

Mr. Kraut Let's see what happens.

Dr. Rugge I also want to understand the rationale.

Mr. Kraut That may be the case, Dr. Rugge, but it's not coming back. If it's done, it's done. It's not going back here. It's up to the applicant. Well, it is up to applicant to decide what to do. We voted.

Mr. Robinson Article 78, it could come back.

Mr. Kraut It could come back to us to reconsider it, and we'll see what happens.

Mr. Robinson I think the other thing that I think we need to be practical about here, and it's reflecting back on Mr. La Rue's comments about the financial feasibility of many of these plans, which it's a significant component of what influenced your decision and your very eloquent comments on this topic. I think looking forward, the likelihood that Medicaid funding is going to be available to not only cover what's currently being paid, but actually the to put in place the kinds of increases that we think may be necessary in order to be able to make these nursing homes financially feasible. It doesn't look optimistic that that's likely to happen. For us to think that the legislature is going to somehow resolve this at the moment, I think is being maybe very hopeful.

Dr. Rugge I concur, and I think that the nursing homes are the most vulnerable of all, but these cuts being proposed by the federal government put at risk many, many practices, medical practices, and put at the risk the shrinking of available services in many of our hospitals. And that's unacceptable, and we need to call attention to it rather than briefly go forward.

Mr. Kraut Okay, I get it. We can call attention to it, but we're dealing with real life people in those beds right now. That's it.

Mr. Kraut With that, I would still encourage Mr. La Rue, Mr. Holt, you know, there is that process issue with the... Notwithstanding the votes we took, I think it's beneficial to kind of sit with the department and look at some of the issues that you raised and how in future application reviews we could improve the information that would allow us to make better decisions. I would encourage you to sit with the department to do that and we'll follow up.

Mr. Kraut Well, I think we have an Ad Hoc Committee. We just appointed whatever we'll call the Ad Hoc Committee to review character and competence and financial feasibility of nursing home transactions.

Mr. Kraut The next regularly scheduled committee day is going to be on Wednesday, June 4th, and the full council's going to convene on Wednesday June 18th. It's Wednesdays, not Thursdays. Both those meetings will be held in the New York City location. I want to just thank everybody, the committees that met yesterday and all the work that's been done. You can see there's a lot of work to be done. I want just to thank everybody for all of the work. Wishing everybody a happy holiday, however you celebrate it.

Mr. Kraut May I now have a motion to adjourn the Public Health and Health Planning council meeting?

Mr. Kraut Dr. Berliner.

Mr. Kraut All those in favor say, "aye."

All Aye.

Mr. Kraut Any abstentions?

Mr. Kraut Motion passes.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 225(4) and 2312 of the Public Health Law, section 23.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

23.5 Expedited [p]Partner [t]Therapy for [chlamydia trachomatis infection] sexually transmitted infections.

(a) Definitions. As used in this section:

(1) “Expedited Partner Therapy” or “EPT” means a practice whereby a health care practitioner chooses to provide a patient with either antibiotics intended for the patient’s sexual partner or partners or a written prescription for antibiotics for the sexual partner or partners to be delivered by the patient to the sexual partner or partners for treatment of exposure to [Chlamydia trachomatis] sexually transmitted infections (STIs).

(2) “Health care practitioner” means a physician, midwife, nurse practitioner, physician assistant, or other person who is authorized under Title 8 of the Education Law to diagnose and prescribe drugs for [Chlamydia trachomatis] STIs, acting within [his or her] their lawful scope of practice.

(b) Liability. A health care practitioner who reasonably and in good faith renders expedited partner therapy in accordance with section 2312 of the Public Health Law and this section, and a pharmacist who reasonably and in good faith dispenses drugs pursuant to a prescription written in accordance with section 2312 of the Public Health Law and this section, shall not be subject to civil or criminal liability or be deemed to have engaged in unprofessional conduct.

(c) Eligibility criteria for EPT. EPT shall:

(1) [be provided only for the partner or partners of a patient diagnosed with Chlamydia trachomatis infection] be provided for sexual partner(s) of patients diagnosed (either through laboratory confirmation or clinical diagnosis) with an STI for which EPT is recommended by the Federal Centers for Disease Control and Prevention (CDC). The department shall list which STIs are eligible for EPT on the department's website and shall promulgate guidelines that include partner eligibility criteria. If a patient's sexual partner(s) are pregnant or suspect possible pregnancy, some EPT medications are not recommended, and the partner(s) should seek medical care as soon as possible. If the patient's sexual partner(s) are pregnant or suspect possible pregnancy, some EPT medications are not recommended, and the partner(s) should seek medical care as soon as possible; and

(2) not be provided [for any partner or partners, when the patient with Chlamydia trachomatis infection seen by the health care practitioner is found to be concurrently infected with gonorrhea, syphilis or HIV] in cases involving suspected or confirmed child abuse, sexual abuse/assault, or where the diagnosed patient's safety may be impacted.

(d) Educational material requirements for patients provided with EPT. Each patient provided with antibiotics or a prescription in accordance with this section must be given informational materials for the patient to give to [his or her] their sexual partner or partners. Each patient shall be counseled by [his or her] the patient's health care practitioner to inform [his or her] the patient's partner or partners that it is important to read the information contained in the materials prior to the partner or partners taking the medication.

The materials shall:

- (1) encourage the partner to consult a health care practitioner for a complete [sexually transmitted infection] sexual health evaluation, including HIV testing, as a preferred alternative to EPT and regardless of whether they take the medication;
- (2) disclose the risk of potential adverse drug reactions, including allergic reactions, and the possibility of dangerous interactions between the patient-delivered therapy and other medications that the partner may be taking;
- (3) inform the partner that [he or she] they may be affected by other [sexually transmitted infections] STIs that may be left untreated by the delivered medicine;
- (4) inform the partner that if symptoms of a more serious infection are present (such as abdominal, pelvic, or testicular pain, fever, nausea or vomiting) [he or she] they should seek medical care as soon as possible;
- (5) recommend that a partner who is or could be pregnant should consult a health care practitioner as soon as possible;
- (6) instruct the patient and the partner to abstain from sexual activity for at least seven days after treatment of both the patient and the partner in order to [decrease the risk of recurrent infection] reduce the likelihood of reinfection;
- [(7) inform a partner who is at high risk of co-morbidity with HIV infection that he or she should consult a health care practitioner for a complete medical evaluation including testing for HIV and other sexually transmitted infections] and
- [(8)] (7) inform the patient and the partner how to prevent [repeated chlamydia infection] and reduce the likelihood of reinfection.

(e) Prescription format. Whenever a health care practitioner provides EPT through the use of a prescription:

(1) the designation “EPT” must be written in the body of the prescription form above the name of the medication and dosage for all prescriptions issued;

(2) if the name, address, and date of birth of the sexual partner are available, this should be written in the designated area of the prescription form; and

(3) if the sexual partner’s name, address, and date of birth are not available, the written designation “EPT” shall be sufficient for the pharmacist to fill the prescription.

(f) Reporting of cases of [Chlamydia trachomatis] STIs by health care providers.

(1) This section shall not affect the obligation to report individual cases and suspected cases of [Chlamydia trachomatis] STIs imposed by Part 2 of this [Chapter] Title.

(2) Reports of cases of [Chlamydia trachomatis] STIs who are provided with EPT shall include the added designation of “EPT” plus the number of sexual partners for whom a prescription or medication was provided.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Pursuant to sections 225(4) and 2312 of the Public Health Law (PHL), the Commissioner of Health and the Public Health and Health Planning Council have the authority to adopt regulations concerning Expedited Partner Therapy for Chlamydia Trachomatis Infection and Other Sexually Transmitted Infections.

Legislative Objectives:

Laws of 2008, Chapter 577, allowed health care providers with prescriptive privileges to provide Expedited Partner Therapy (EPT) for Chlamydia when the prescriber's judgment is that the partner(s) will not seek a personal medical visit. This law has helped improve treatment rates for partners and decrease re-infection rates for partners. Laws of 2019, Chapter 298, amended PHL section 2312 to expand the use of EPT for other sexually transmitted infections (STIs) that the Centers for Disease Control and Prevention (CDC) recommends for EPT, in addition to Chlamydia.

EPT helps physicians and other health care providers decrease rates of STIs. While EPT in no way replaces a face-to-face interaction with a health care provider, it can help patients who otherwise would not reach out for treatment.

The CDC has found through randomized controlled tests that EPT has the potential for the same success that it has shown with Chlamydia with other STIs. EPT can be highly effective in decreasing infection rates with other STIs, such as gonorrhea, that can be cured by taking antibiotics by mouth.

Needs and Benefits:

EPT is the clinical practice of providing individuals with medication or a prescription to deliver to their sexual partner(s) as treatment for a presumptive STI, without completing a clinical assessment of those partners.

On January 1, 2020, Chapter 298 of the Laws of 2019 went into effect, expanding PHL section 2312 to permit expedited treatment for STIs for which the CDC recommends the use of expedited therapy. Prior to this change, EPT was allowable in New York State for chlamydia only. In addition to supporting EPT for chlamydia, at this time the CDC also supports or lists EPT as a strategy for partner management for persons diagnosed with either gonorrhea or trichomoniasis.

Chlamydia, gonorrhea, and trichomoniasis are STIs that are transmitted by sexual contact with a penis, vagina, mouth, or anus of an infected sex partner; these STIs can result in adverse health effects if left untreated. According to the 2019 national STI surveillance report released by CDC, both chlamydia and gonorrhea diagnoses have continued to rise, with 19% and 56% increases, respectively since 2015. New York State has mirrored the national increases in both chlamydia and gonorrhea with 20% and 60% increases, respectively, since 2015. Additionally, though trichomoniasis is not a reportable STI both nationally and in New York State, the CDC estimates that nationally there are around 6.9 million (diagnosed or undiagnosed) new infections.

With respect to EPT, three US clinical trials involving heterosexually active males and females with chlamydia or gonorrhea all show that more sexual partners were treated when the patients were offered EPT. Two out of those three trials showed a significant reduction in re-infection of the patients, and the third noted a decreased risk of recurrent infection that was not significant. One trial show that there was a reduction in prevalence as high as 10% in females

when EPT was provided free of charge. Though trials and meta-analyses conducted on EPT differ in findings with respect to the magnitude of the reduction in re-infection, all show a reduction in prevalence in chlamydia and gonorrhea at follow up. Though data on EPT for trichomoniasis is limited, EPT may have a role in partner management, and it should remain an option when treatment of partners cannot otherwise be assured.

The CDC, along with several national professional organizations, recommend EPT as an effective and practical strategy for treating the sex partners of people diagnosed with chlamydia and/or gonorrhea. The New York State Department of Health (NYSDOH) previously released a position statement strongly encouraging providers to utilize EPT as a strategy to treat the sex partner(s) of persons diagnosed with chlamydia. In consideration of the expansion of the law, and of what is a larger shift toward a comprehensive sexual health framework, the position statement was revised to: expand the use of EPT to include gonorrhea and trichomoniasis, remove exclusionary language, and include updated treatment guidelines.

Current New York Codes, Rules, and Regulations (NYCRR) section 23.5, of Title 10 provides definitions, and eligibility specific to EPT for chlamydia only. Given the expansion of PHL section 2312 to include additional STIs beyond chlamydia alone, the regulation needs to be modified as follows: 1) rather than defining EPT as a strategy for treating chlamydia, EPT needs to be defined as a strategy more generically for STIs and be integrated with other sexual health services, 2) rather than stating eligibility is limited to persons diagnosed with chlamydia who are not co-infected with gonorrhea or HIV, the regulation should state persons eligible for EPT are those diagnosed with an STI for which the CDC recommends the use of EPT for partner management, and 3) an addendum to the eligibility section should include language permitting the Commissioner of Health to designate which STIs are eligible in the department's website.

Additional proposed modifications to the current regulation specific to the educational material requirements include: shifting from the use of binary language (“his/her”) to gender neutral language (“their”) to ensure inclusivity and removing specific language stating persons at high risk of co-morbidity with HIV should seek medical evaluation, as HIV testing for all persons receiving EPT educational materials is already included as a recommendation in a previous section and this additional callout can be deemed stigmatizing.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

An estimated \$850 million is spent annually treating chlamydia and gonorrhea in the US. EPT can decrease these costs by reducing the spread of infections and re-infections by reducing the reliance on public services to treat STIs. If left untreated, chlamydia and gonorrhea can progress to pelvic inflammatory disease (PID) in females, resulting in additional treatment costs of \$1,167 per case of PID. Both infections are also a common cause of infertility; and because EPT increases STI treatment rates and reduces prevalence of chlamydia and gonorrhea, infertility and PID resulting from such infections will likely decline. Both chlamydia and gonorrhea change the immune system and may increase a person’s chances of contracting HIV if exposed to the virus. Data related to costs for screening and treatment of trichomoniasis are limited. Integrating EPT into a broader sexual health approach can have significant public health benefits, including lowering overall STI rates and reducing healthcare costs associated with untreated infections.

Costs to State and Local Governments:

This regulation imposes no costs on State and local governments. It expands the use of EPT.

Costs to the Department of Health:

The additional costs to the NYSDOH will be related to additional data collection burden and follow up; such costs are expected to be minimal and easily accommodated within existing infrastructure.

Local Government Mandates:

This proposal has no local mandates.

Paperwork:

The existing electronic data collection mechanism was revised when the law was changed such that local health departments could start reporting provision of EPT for the other STIs.

Duplication:

These regulations will not conflict with any State or federal rules.

Alternatives:

The alternative to this regulatory amendment would be to not conform the regulation to PHL section 2312, as amended by Laws of 2019, Chapter 298. This is not a viable alternative as

the Department of Health is obligated to execute the PHL. This regulation is further necessary to expand the availability EPT to reduce the rates of sexually transmitted infections.

Federal Standards:

The Centers for Disease Control and Prevention has recommendations related to expedited partner therapy. This regulation is consistent with federal standards.

Compliance Schedule:

This regulation is effective upon the publication of the Notice of Adoption in the State Register. This regulation permits, but does not require, EPT for STI.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

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

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

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

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because the New York State Department of Health has determined that these regulatory changes will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Public Health Law section 2803, section 405.6 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (vi) of paragraph (7) of subdivision (b) of Section 405.6 is amended to read as follows:

(b) The activities of the quality assurance committee shall involve all patient care services and shall include, as a minimum:

* * *

(7) the committee shall oversee and coordinate the following:

* * *

(vi) a [biennial] triennial review of credentials, physical and mental capacity and competence in delivering health care services of all clinical staff who are employed or associated with the hospital which for physicians, dentists and podiatrists shall include a comprehensive review of the information maintained in accordance with subparagraph (v);

NOTICE OF CONSENSUS RULEMAKING

Statutory Authority:

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

Basis:

On May 1, 2024, the physician credentialing review requirements in section 405.4(b)(4) and section 405.6(b)(7)(i) were changed from biennial to triennial. The amendments to section 405.4(b)(4) and section 405.6(b)(7)(i) lengthened the requirement for general hospitals to review the credentials of medical staff from every two years to every three years in order to reduce administrative burdens and provide consistency with revisions by The Joint Commission to its credentialing and privileging standards applied to its Advanced Diagnostic Imaging, Ambulatory Surgical Center, Critical Access Hospital, and Hospital accreditation programs.

This regulation makes a conforming amendment to section 405.6(b)(7)(vi), again changing a biennial credentialing review requirement to triennial. Under section 405.6(b)(7)(vi), as amended, general hospital quality assurance committees must oversee and coordinate a triennial review, not a biennial review. This consensus regulation corrects a drafting error in the regulation that was published and effective on May 1, 2024, to ensure the requirements are consistent throughout the regulation. No person is likely to object to this consensus rulemaking, because it simply corrects the regulation to make it consistent throughout, and the Department did not receive any public comments in opposition to the original rulemaking amending the requirements for physician credentialing review from biennial to triennial.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

SUMMARY OF EXPRESS TERMS

Governor Hochul recognized in her 2024 State of the State that health care providers face administrative barriers when seeking to modernize and invest in their facilities, including specifically the Certificate of Need process. Governor Hochul thus directed the Department to review and amend the Certificate of Need process, including raising the cost thresholds for projects subject to a more detailed review and streamlining the application and approval processes, including for routine services.

The regulatory proposal would repeal and replace section 710.1 of Part 710 of Title 10 of the New York Codes, Rules, and Regulations (NYCRR). Generally, the proposal modernizes the Certificate of Need review process for construction of health care facilities. It reorders subdivisions and paragraphs logically, combining redundant language pertaining to all review levels in general paragraphs up front. Language pertaining to requirements, processes and practices that are obsolete have been removed.

This proposal will increase the cost thresholds that generally determine the level of review for projects as directed in the 2024 State of the State and revises review levels for specific types of projects to reflect the advances and evolving trends in healthcare. A detailed description follows below:

710.1(a) remains unchanged, specifying that medical facilities shall be planned to achieve efficiency and economy of operation and care of high quality.

710.1(b) includes definitions of “general hospital,” “total project cost(s),” “total basic cost(s) of construction”

Pertinent elements of 710.1(d), (e), (f) and (g) have been moved into a new 710.1(c), with subsequent paragraphs re-ordered accordingly. New subdivision 710.1(c) is organized to begin with general requirements and then detail the different levels of certificate of need review beginning with the most rigorous and ending with the most streamlined.

710.1(c)(1) covers the types of proposals requiring a Certificate of Need application, which remains largely unchanged from the current regulation except for the overall total project costs thresholds will shift from over \$15 million for a general hospital and \$6 million for all other facilities to over \$30 million for a general hospital and \$8 million for all other facilities. Project cost thresholds were last raised in 2017; construction costs have more recently increased substantially. The amounts included in the proposal reflect an appropriate balance between the increased construction costs for large-scale projects and the desire to maintain sufficient oversight while reducing administrative barriers.

710.1(c)(2) delineates general tenants of Certificate of Need review that pertain to all projects. These have been consolidated and clarified where necessary from the current regulation. The one major change from the current regulation is that the total project cost threshold under which architectural self-certification is allowed has been raised from \$15 million to \$30 million. The amounts included in the proposal reflect an appropriate balance between the recognition of increased construction costs for large-scale projects and the desire to maintain sufficient oversight while reducing administrative barriers.

710.1(c)(3) describes proposals requiring a Full Review including a recommendation from the Public Health and Health Planning Council. Specifically, it raises the total project cost thresholds subject to Full Review for general hospitals to the greater of \$60 million (currently \$30 million) or 10% of a facility's operating costs, not to exceed \$150

million, and for all other facility types subject to certificate of need review, projects that exceed the greater of \$20 million (currently \$15 million) or 10% of a facility's operating costs, not to exceed \$30 million. For projects adding beds, converting beds to a higher level of care, or otherwise changing the number of beds, only those that add or otherwise change more than 10% of existing beds will be subject to Full Review regardless of cost. Conversion of beds to a lower level of care if less than 10% of existing beds which be subject to Administrative or Limited review. Lung transplant services are added to those that require a full review certificate of need while several other services have been removed including Therapeutic Radiology, Cardiac Catheterization, Bone Marrow Transplantation, Burn Care, Acquired Immune Deficiency Syndrome (AIDS) centers, and Epilepsy Services.

710.1(c)(4) describes proposals eligible for Administrative Review. Specifically, it raises the total project cost thresholds for general hospitals subject to Administrative Review to greater than \$30 million (currently \$15 million) but not exceeding the greater of \$60 million or 10% of a facility's operating costs not to exceed \$150 million and for other facility types, greater than \$8 million (currently \$6 million) but not exceeding the greater of \$20 million or 10% of a facility's operating costs not to exceed \$30 million. The amounts included in the proposed regulation reflect an appropriate balance between the recognition of increased construction costs for large-scale projects and the desire to maintain sufficient oversight.

In addition, references to specific services have been removed from the regulation. These include services that either no longer need to be separated out or that better fit within the general review requirements, including but not limited to: Diagnostic Cardiac

Catheterization service; changes in bed capacity at an acquired immune deficiency syndrome (AIDS) center; addition of skilled nursing facility beds for individuals with acquired immune deficiency syndrome (AIDS); acquisition of magnetic resonance imaging (MRI) machines; addition of adult day health care services; and acquisition of computed tomography (CT) scanners.

710.1(c)(4) also makes any project funded primarily by state grants eligible for Administrative Review to avoid subjecting projects for modernization of the States health care infrastructure to duplicative levels of review.

Finally, 710.1(c)(4) removes projects involving Emergency Room space from requiring Administrative Review in order to reduce approval times and support providers in meeting heightened demand for such services.

710.1(c)(5) describes proposals eligible for Limited Review. Specifically, it raises the total project cost threshold eligible for Limited Review to \$30 million (currently \$15 million) for general hospitals and \$8 million (currently \$6 million) for all other facility types.

Other changes include exempting from review the addition or renovation of exam rooms in facilities where such space already exists within or adjacent to previously certified space regardless of project cost as exam rooms pose minimal risk as they are used for limited scope of services with minimal physical environmental standards. Such projects would require only notice to the Department. The proposed regulations would also make mobile van extension clinics eligible for Limited Review as they have fewer generally accepted design and construction standards than traditional brick and mortar buildings.

These proposed regulations reflect an appropriate balance between the recognition of reducing administrative barriers and approval times and the desire to maintain sufficient oversight.

The previous 710.1(c)(6) delineating cardiac catheterization proposals requiring limited review was removed. Projects covered therein will be assigned a review level under general provisions of the new section, e.g., project cost thresholds and impact on the facility's operating certificate.

The new 710.1(c)(6) describes proposals that do not require a Certificate of Need Application and require only written notice to the State Department of Health. Notices will be required for non-clinical projects greater than \$12 million instead of the previous \$6 million. Also, any project that is otherwise eligible for Limited Review, but is architecturally self-certified by the applicant, will now also be eligible for notice only as long as it does not involve a change in the beds or services which would require an update to the applicant's operating certificate.

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803(2)(a) of the Public Health Law, section 710.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and replaced, to be effective after publication of Notice of Adoption in the New York State Register, to read as follows:

Section 710.1 General provisions.

(a) Medical facilities shall be planned to achieve efficiency and economy of operation and care of high quality.

(b) For purposes of this Part, the following terms shall have the following meanings:

(1) “General hospital” means a general hospital as defined in subdivision 10 of section 2801 of the Public Health Law.

(2) “Total project cost(s)” means total costs for construction, including but not limited to costs for demolition work, site preparation, design and construction contingencies, total costs for real property, for fixed and movable equipment, architectural and/or engineering fees, construction manager and/or consultant fees, construction loan interest costs, and other financing, professional and ancillary fees, charges, and allowances. Such costs shall include the cost of all capital items associated with an acquisition, lease arrangement and/or construction. If any acquisition is to be financed through a leasing arrangement, the relevant cost shall be the cost of the asset, not the lease amount.

(3) “Total basic cost(s) of construction” means total project cost(s) less capitalized amounts of construction loan interest cost(s) and other financing fees and charges.

(c) The erection, building, acquisition, alteration, reconstruction, improvement, extension, or modification of a medical facility, including its equipment and services shall be governed by the following:

(1) Proposals requiring a certificate of need application. Any proposal which involves any of the following shall be the subject of an application submitted for review pursuant to the requirements of this Part and Article 28 of the Public Health Law:

(i) the initial construction or acquisition of a building for use as a hospital as defined in subdivision 1 of section 2801 of Public Health Law;

(ii) any other construction, addition or replacement proposal involving a total project cost in excess of \$30,000,000 for a general hospital or \$8,000,000 for all other facilities, except non-clinical and health information technology projects subject to paragraph (6) of this subdivision;

(iii) a conversion of beds or a change in the certified bed capacity of a facility, regardless of cost;

(iv) the addition, modification, change in the method of delivery of, decertification of a licensed service, or the addition or deletion of approval to operate part-time clinics, regardless of costs. The addition or deletion of part-time clinic services operated by the State Department of Health (other than as an extension of an article 28 hospital operated by the State Department of Health) or by the health department of a city or county as such terms are defined in section 614 of the Public Health Law shall not be subject to approval pursuant to this Part; or

(v) the initial acquisition or addition of any equipment, regardless of cost, utilized in the provision of a service listed in paragraph (3) of this subdivision. A proposal for the replacement of existing equipment, regardless of cost, which meets the criteria contained therein, shall not require an application but shall be processed pursuant to paragraph (6) of this subdivision.

(2) Certificate of Need applications shall be processed as follows:

(i) Applicants shall submit all such requests for approval of proposals described in this section through the electronic application submission process at the address posted on the department's website, including such information and documentation as the department requires to determine whether the proposal is acceptable to include the services to be provided and the facility areas to be utilized. If construction is required, the request should include the cost of such construction and information required by the State Department of Health Bureau of Architectural and Engineering Facility Planning under this Part.

(ii) A review shall be conducted of the proposal's compliance with applicable statutes, codes, rules, and regulations relating to the operation of the proposed facility as well as the structural, architectural, engineering, environmental, safety and sanitary requirement of licensed medical facilities as appropriate.

(iii) If the department determines that the proposal complies with all pertinent statutory and regulatory requirements, the department shall notify the applicant, in writing, that the proposal is acceptable and, if applicable, an amended operating certificate will be issued.

(iv) If the department determines that the proposal is not acceptable, the applicant shall be notified in writing of such determination and the bases thereof. For any application deemed unacceptable, if the applicant disagrees with the commissioner's determination, the applicant may submit a Certificate of Need application to be processed for full review in accordance with this Part.

(v) For any application for which the total basic cost of construction does not exceed \$30,000,000, as an alternative to the department's review of the architectural and engineering documentation required under this Part, the commissioner may accept a written self-certification by an architect or engineer licensed by the State of New York, that such project complies with applicable statutes, codes, rules, and regulation Parts 711 through 717 and 795 of this Title without exceptions or waivers. The self-certification shall be provided with the architectural and engineering documentation and will be made available for review at the onsite survey conducted by the department in accordance with article 28 of the Public Health Law. The costs of any subsequent corrections necessary to achieve compliance with the requirements when the prior work was not completed properly and was not accurately certified shall not be considered allowable costs for reimbursement under Part 86 of this Title. This clause does not waive any of the requirements of section 5-1.22 of this Title pertaining to any project interaction with public water systems.

(vi) Medical facilities undertaking programmatically related construction and/or acquisition projects during their fiscal year with an aggregate total cost that will exceed \$30,000,000 for general hospitals or \$8,000,00 for all other facilities shall submit a single application encompassing all such projects for review pursuant to the requirements of this

Part and article 28 of the Public Health Law. If a subsequent audit reveals that during any such period a medical facility has undertaken several projects or submitted several proposals or applications that are programmatically related and total more than \$30,000,000 in the aggregate for general hospitals or \$8,000,00 in the aggregate for all other facilities, the facility's reimbursement rate may be reduced to the extent it includes the cost of the related projects.

(3) Proposals requiring a Full Review, including a recommendation of the Public Health and Health Planning Council pursuant to the requirements of this Part and article 28 of the Public Health Law:

(i) any proposal involving total project cost in excess of \$60,000,000 for a general hospital or \$20,000,000 for all other facilities, except as otherwise provided under paragraph (4) of this subdivision;

(ii) the addition of beds totaling more than 10% of current beds or the conversion of more than 10% of current beds to a bed type of a higher level of care, regardless of cost;

(iii) any proposal for the addition or modification of the following services, or the initial acquisition of any equipment relating thereto, regardless of cost:

(a) adult or pediatric cardiac surgery; or

(b) kidney, heart, liver, and lung transplantation;

(iv) any proposal which would otherwise be eligible for Administrative Review, but which exceeds a facility's Administrative Review limitation; or

(v) any proposal which would otherwise be eligible for Administrative or Limited Review, but which is recommended for disapproval.

(4) Proposals eligible for Administrative Review.

(i) The commissioner may administratively approve applications submitted pursuant to article 28 of the Public Health Law and this Part without the recommendation of the Public Health and Health Planning Council where the total project cost does not exceed \$60,000,000 for a general hospital or \$20,000,000 for all other facilities. An application shall be eligible for Administrative Review even though total project costs exceed \$60,000,000 for a general hospital or \$20,000,000 for all other facilities, if:

(a) (1) total project costs do not exceed 10% of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application; and

(2) total project costs do not exceed \$150,000,000 for a general hospital or \$30,000,000 for all other facilities. Notwithstanding anything in this Part to the contrary, any cost increase of a project in excess of \$60,000,000 for general hospitals or \$20,000,000 for all other facilities that is administratively reviewed under this subparagraph, resulting in total project costs in excess of the \$150,000,000 for general hospitals or \$30,000,000 for all other facilities, or in excess of 10% of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application, shall subject the application to full review; or

(b) the project is funded primarily through awarded State grants.

(ii) The following types of proposals shall require an Administrative Review even if they meet the total project cost threshold for Limited Review under paragraph (5) of this subdivision:

(a) the addition or modification of a licensed service other than those set forth in paragraph (3) of this subdivision which require Full Review;

(b) the addition of beds totaling up to 10% of current beds or the conversion of up to 10% of current beds to a bed type of a higher level of care, regardless of cost;

(c) the conversion of beds other than a conversion which would establish a higher level of care, which proposal would require a full review, including a recommendation of the Public Health and Health Planning Council, and except as provided for in paragraph (5) of this subdivision;

(d) the temporary addition of beds to a facility's certified capacity, for a period of time not to exceed one year, required to address high priority health care needs for which there is a demonstrated severe shortage;

(e) the operation or relocation of an extension clinic as defined in section 401.1 of this Title, when such relocation is to a site outside of the current service area of the extension clinic, as defined in paragraph (5) of this subdivision;

(f) the addition of a methadone maintenance treatment program;

(g) an application for the relocation of long-term ventilator beds from one residential health care facility to another residential health care facility with common ownership.

Common ownership shall be found when the ownership in the operator of each

residential health care facility is the same, provided the percentage of ownership interest of each owner may vary between the two facilities but must meet the whole in common ownership; or

(h) the addition of chronic renal dialysis stations by a facility approved and operating dialysis stations. A facility approved to provide only chronic renal dialysis shall be deemed approved to provide:

(1) all modalities of chronic renal dialysis; and

(2) chronic renal dialysis services to patients at home, provided that a facility shall give the appropriate area office of the department at least 15 days' written notice prior to commencing or terminating the facility's program for the provision of chronic renal dialysis services to patients at home.

(5) Proposals eligible for Limited Review.

(i) Proposals where total project cost does not exceed \$30,000,000 for a general hospital or \$8,000,000 for all other facilities, and for which a higher level of review is not otherwise required under this Part, shall be eligible to be reviewed under this paragraph, except for proposals covered by paragraph (6) of this subdivision.

(ii) A review shall be conducted of the proposal's compliance with applicable statutes, codes, rules, and regulations relating to the structural, architectural, engineering, environmental, safety and sanitary requirement of licensed medical facilities, where the proposal relates to the acquisition, relocation, installation, or modification of:

(a) Medical equipment involving ionizing radiation or magnetic resonance, including magnetic resonance imagers (MRIs) and computed tomography (CT) scanners by a general hospital as defined in article 28 of the Public Health Law.

(b) Facility areas relating to clinical services or surgical or other invasive procedures, not otherwise requiring approval under this section, except examination rooms which are covered under paragraph (6) of this subdivision.

(c) Inpatient units, including resident rooms in a residential health care facility and other spaces used by residents of residential health care facilities on a daily basis, other than when routine maintenance and repairs are performed or for routine purchase of equipment.

(d) Heating, ventilating, air conditioning, plumbing, electrical, water supply, and fire protection systems that involve modification or alteration of clinical space, services or equipment such as operating rooms, treatment and procedure rooms, and intensive care, cardiac care and other special care units (such as airborne infection isolation rooms and protective environment rooms), laboratories and special procedure rooms, and patient or resident rooms or other spaces used by residents of residential health care facilities on a daily basis. Projects involving routine maintenance or repairs or routine purchases affecting such systems shall not be subject to this subparagraph.

(iii) The following proposals shall also be subject to Limited Review under this paragraph for programmatic and/or public need purposes:

(a) Any proposal to decertify a facility's beds, for which a higher level of review is not otherwise required under this Part. The applicant shall submit information indicating the

number of beds to be decertified, where the beds to be decertified are physically located in the facility and what, if any, alternate use will be made of the space.

(b) Any proposal solely to decertify services, other than those set forth in subparagraph (3)(iii) of this subdivision. The applicant shall submit information indicating the services to be decertified, where the services to be decertified are physically provided and what, if any, alternate use will be made of the space.

(c) Any proposal to add services, other than those set forth in subparagraphs (3)(iii) and (4)(i) of this subdivision, for which a higher level of review is not otherwise required under this Part. The applicant shall submit information indicating the services to be certified, the additional staffing requirement, if any, where the services to be certified are physically provided in the facility and what, if any, construction will be required in the facility.

(d) Any proposal to convert beds from one category to another in the categories listed in this clause and for which the acute care inpatient facility is already a certified provider. The applicant shall submit information indicating the number of beds to be converted and the categories from and to which the beds will be converted.

This clause applies to beds in the following categories:

(1) medical/surgical;

(2) intensive care;

(3) coronary care;

(4) pediatric;

(5) pediatric intensive care;

(6) neonatal intensive care;

(7) neonatal intermediate care;

(8) neonatal continuing care;

(9) maternity; and

(10) chemical dependence - detoxification.

(e) Any proposal to relocate an extension clinic within the same service area, defined as:

(1) one or more postal zip code areas in each of which 25% or more of the extension clinic's patients reside; or

(2) the area within one mile of the current location of such extension clinic, which does not entail an increase in services or clinical capacity.

(f) Any proposal to operate, change services offered, change hours of operation, or relocate a part-time clinic site other than the discontinuance of service subject to clause 6(i)(d) of this subdivision. Requests for approval shall be consistent with the provisions of section 703.6(b) of this Title. If a proposal requests approval for an arrangement or services that are not permissible for a part-time clinic, the proposal will not be accepted for processing under this section.

(g) The relocation of an extension clinic within the same service area, defined as:

Notwithstanding anything in this Title to the contrary, any proposal for the reallocation, relocation, or redistribution of acute care beds from one general hospital to another general hospital within the same established article 28 network. The applicant shall

submit information indicating the current and proposed certified bed capacity for each service and facility for which the reallocation, relocation or redistribution of beds is proposed.

(h) Any proposal to operate a mobile van extension clinic.

(6) Proposals not requiring an application.

(i) The following types of construction projects shall not require prior approval under this Part, regardless of cost, provided that a written notice has been submitted to the department prior to commencement of construction, together with, where indicated in this paragraph, a written certification by a New York State licensed architect or engineer that the project meets all applicable statutes, codes and regulations; and provided that the hospital shall implement a plan to protect patient safety during construction projects that implicate patient safety, consistent with section 711.2 of this Part and other applicable standards, and as otherwise required by the department:

(a) Any proposal for the correction of cited deficiencies, consistent with a plan of correction approved by the department, provided that the construction is limited to the correction of the deficiencies.

(b) Any proposal for the repair or maintenance of a medical facility, including routine purchases and the acquisition of minor equipment undertaken in the course of a medical facility's inventory control functions, provided that for proposals under this clause with a total cost of up to \$12,000,000, including separate proposals which are programmatically related, no written notice shall be required. This subparagraph shall not apply to activities requiring a Limited Review under paragraph (5) of this subdivision.

(c) Any proposal for the addition or renovation of examination rooms within or adjacent to previously certified space.

(d) Any proposal to discontinue a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of section 703.6 of this Title.

(e) Any proposal for the replacement of existing equipment, regardless of cost, with another piece of equipment used for similar purposes but employing substantially equivalent current technology which, if subject to approval by the U.S. Food and Drug Administration, has received such approval. The facility's written notice to the department shall include a written certification by a New York State licensed architect or engineer that the project meets the applicable statutes, codes, and regulations; and a plan to protect patient safety during replacement projects that implicate patient safety, consistent with section 711.2 of this Part and other applicable standards, and as otherwise required by the department. Upon completion of the project, the facility shall, where applicable, submit written certification by a New York State licensed architect, engineer and/or physicist that the replacement equipment as installed meets applicable statutes, codes, and regulations; and such other close-out documents as may be required by the department.

(f) Subject to clause (5)(ii)(d) of this subdivision, any proposal for a nonclinical infrastructure project with total project costs in excess of \$12,000,000, including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and

solid waste and/or sewage disposal and upgrades of the exterior building envelope. The facility's written notice to the department shall include a written certification by a New York State licensed architect or engineer that the project meets the applicable statutes, codes, and regulations; and shall include a plan to protect patient safety during construction consistent with section 711.2 of this Part and other applicable standards, and as otherwise required by the department. Upon completion of the project, the facility shall, where applicable, submit written certification by a New York State licensed architect, engineer and/or physicist that the project as constructed or installed meets applicable statutes, codes, and regulations; and such other close-out documents as may be specified by the department.

(g) Any proposal that relates to health information technology regardless of cost. For health information technology proposals involving the implementation of clinical information systems, electronic medical records, computerized physician order entry, radiology systems, lab ordering systems or other health information systems impacting patient care, the facility's written notice to the department shall include a certification of the technology's interoperability with other systems and conformance with State and Federal guidelines and regulations governing the use and exchange of information, including privacy and security, that is acceptable to the department.

(h) Any project eligible for review under paragraph 5 of this subdivision that does not impact the applicant's operating certificate and for which the applicant has submitted a written self certification by an architect or engineer licensed by the State of New York as delineated under subparagraph (2)(v) of this subdivision.

(ii) Proposals for a nonclinical infrastructure project, including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and solid waste and/or sewage disposal and upgrades of the exterior building envelope, where total project costs do not exceed \$12,000,000, shall not require prior approval or written notice to the department under this Part, except as required by clause (5)(ii)(d) of this subdivision.

(iii) Notwithstanding anything in this section to the contrary, the commissioner may, at the commissioner's discretion, approve capital expenditures that may be required in response to new state, municipal, or federal code requirements. Such approval may only be considered when such code changes affect large numbers of hospitals (as such term is defined in Article 28 of the Public Health Law) and where the commissioner finds that the capital expenditure is unlikely to create any risk to patient safety. Upon such determination, the commissioner shall notify affected hospitals of the opportunity to proceed with such capital expenditures based on a letter of notice to the department. The commissioner may impose a cap on anticipated individual project capital expenditures for such a waiver.

(d) Medical facilities shall maintain a record of all additions to property, plant and equipment made during the appropriate 12-month period reflected in their capital budget. Each addition, which is subject to paragraph (1) of subdivision (c) of this section, must be supported by an application approved pursuant to article 28 of the Public Health Law and this Part. Each medical facility shall, as a matter of routine, submit with the annual certified cost reimbursement reporting forms required by the department, identification of

its annual capital expenditures, as provided for in the section entitled “Changes in financial positions,” indicating separately the total amounts thereof involving projects in the following categories: below \$8 million and over \$8 million, which have received appropriate approvals pursuant to this Part, and the nature of each approval. The facilities shall also provide to the department annually, on forms provided by the department, a list of projects between \$1 million and \$8 million, which have been undertaken by the facility, although such projects do not require certificate of need approval.

(e) All drawings and specifications shall bear the seal and signature of an architect or engineer licensed to practice in New York State. The commissioner, at his discretion, may waive the above requirement when the construction cost is less than \$10,000 in value, unless otherwise provided for in this Part.

(f) All construction in or of a medical facility shall have competent and adequate architectural and/or engineering inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications.

(g) As a part of the application required for approval of the project, the applicant shall give the following assurances:

(1) that the applicant has or will have a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way sufficient to assure use and possession for the purpose of the construction and operation of the facility;

(2) that the applicant will obtain the approval of the commissioner of all required submissions, which shall conform to the standards of construction and equipment of this Subchapter;

(3) that the applicant will submit to the commissioner final working drawings and specifications, which shall conform to the standards of construction and equipment of this Subchapter, prior to contracting for construction, unless otherwise provided for in section 710.7 of this Part;

(4) that the applicant will cause the project to be completed in accordance with the application and approved plans and specifications;

(5) that the applicant will provide and maintain competent and adequate architectural and/or engineering inspection at the construction site to insure that the completed work conforms with the approved plans and specifications;

(6) that if the project is an addition to a facility already in existence, upon completion of construction all patients shall be removed from areas of the facility which are not in compliance with sections 711.4 through 711.8 of this Title, or other pertinent provisions of this Subchapter, unless a waiver is granted to specific provisions by the commissioner, under section 711.9 of this Title;

(7) that the facility will be operated and maintained in accordance with the standards prescribed by law; and

(8) that the applicant will comply with the provisions of the Public Health Law and the applicable provisions of this Title with respect to the operation of all established, existing medical facilities in which the applicant has a controlling interest.

(h) The applicant shall be required to adequately equip the facility to assure its proper operation.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2)(a) provides that the Public Health and Health Planning Council (PHHPC) shall adopt rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the purposes of PHL Article 28 with respect to hospitals.

Legislative Objectives:

PHL section 2800 declares that “[h]ospitals and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health” and bestows upon the Department of Health the “central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services.” The review of applications for hospital establishment and construction is referred to as the Certificate of Need process, the objectives of which are to align health care resources with community health needs, preserve and promote access to high quality health care, and control utilization to promote cost-effective health care.

PHL section 2801-a provides that hospitals, defined in PHL section 2801 to mean “general hospitals”, nursing homes and diagnostic and treatment centers, may not be established except as approved by PHHPC. PHHPC may not approve the establishment of hospitals unless it is satisfied as to the public need for and financial feasibility of the proposed project, the character and competence of the proposed owners and operators, and such other matters as it deems pertinent. The construction of a hospital, defined by PHL section 2801 to mean the erection, building, or substantial acquisition, alteration,

reconstruction, improvement, extension, or modification of a hospital, including its equipment, requires the prior approval of the Commissioner under PHL section 2802. The Commissioner may approve a construction application only after affording PHHPC an opportunity to make a recommendation, except where regulations adopted by PHHPC and approved by the Commissioner provide that PHHPC review is not necessary, and only if the Commissioner is satisfied as to public need, financial feasibility and character and competence. PHL section 2802 details procedures for approval of hospital construction projects and provides that certain types of hospital construction projects require written notice to the Department but not prior approval. These include the acquisition of minor equipment, nonclinical infrastructure projects (such as replacement of heating, ventilating and air conditioning systems, parking lots and elevators), the replacement of existing equipment, and other projects set forth in regulation.

Current Requirements:

Consistent with these provisions, Department regulations establish the parameters of the Certificate of Need process for establishment and construction projects. Part 600, et seq., of Title 10 of the Official Compilation of New York Codes, Rules, and Regulations (NYCRR) pertains to establishment and 10 NYCRR Part 710, et seq., relates to construction projects.

Part 710 of 10 NYCRR defines three levels of review for construction projects, (i) Full Review, (ii) Administrative Review or (iii) Limited Review.

Construction projects of greater complexity and higher costs undergo Full Review, requiring submission of a Certificate of Need application that includes a series of forms and schedules and a detailed review for financial feasibility and public need. PHHPC

must be afforded an opportunity to make a recommendation on full review construction projects, while the ultimate determination of whether to approve such projects lies with the Commissioner.

Applications that undergo Administrative or Limited Review may be approved by the Commissioner without the recommendation of PHHPC. Administrative Review requires a Certificate of Need application including the same forms and schedules used for Full Review, including those for a financial review. Limited Review uses abbreviated schedules including a narrative describing the construction activity to be undertaken, the cost of the construction, and where applicable, architecture/engineering drawings or certification. Limited review generally does not include a review for financial feasibility.

Section 710.1(c)(1) specifies that Certificate of Need applications are necessary for certain types of construction projects, including the addition, modification, or decertification of licensed services, changes in the method of delivery of a licensed service, regardless of cost, or certain acquisitions or addition of equipment. Subsequent paragraphs delineate the criteria by which projects are assigned an appropriate level of review based on the type of action, the services, and specific circumstances of a project as well as the project cost.

Section 710.1(c)(2) provides that “Full Review” is required for construction applications that involve the addition of beds, the addition or modification of a change in delivery for certain services, and proposals involving total project costs in excess of \$30 million for general hospitals or \$15 million for all other facilities.

Section 710.1(c)(3) provides that projects eligible for “Administrative Review” generally.

include those with a total project cost that does not exceed \$30 million. However, an application shall be eligible for Administrative Review even though total project costs exceed \$30 million, if: (a) total project costs do not exceed 10 percent of the total operating costs of the facility for the year ended two years prior to the submission of the application; and (b) total project costs do not exceed \$100 million for a general hospital or \$25 million for all other facilities.

Section 710.1(c)(5) identifies construction projects subject to “Limited Review,” which generally include projects with costs that do not exceed \$15 million for a general hospital and \$6 million for all other facilities. Pursuant to section 710.1(c)(5)(ii), Limited Review also applies to non-clinical projects involving heating, ventilating, air conditioning, plumbing, electrical, water supply and fire protection systems where such projects involve the modification or alteration of clinical space, services, or equipment.

Section 710.1(c)(4) provides that certain construction projects do not require review but require written notice to the Department. Such projects include non-clinical infrastructure projects (other than projects affecting clinical space, which would require limited review as noted above).

Needs and Benefits:

Over the years, the Department has periodically refined the Certificate of Need process to ensure that it continues to advance its objectives, is responsive to a changing health care environment, focuses Department and PHHPC resources on issues and projects with the

greatest impact, and is as streamlined and expeditious as possible within the parameters of the statutory authority.

In furtherance of these goals, Governor Hochul recognized in her 2024 State of the State that health care providers face administrative barriers when seeking to modernize and invest in their facilities, including specifically the Certificate of Need process. Governor Hochul thus directed the Department to review and amend the Certificate of Need process, including raising the cost thresholds for projects, stating that such reforms will reduce red tape and approval times for more rapid modernization of the State's health care infrastructure.

This proposal will raise monetary thresholds determining the level of review for clinical projects as well as the threshold for when certain projects require written notice. The proposal also focuses on specific services and projects and the level of review required by current regulations, with the goal of avoiding, among things, subjecting certain services and projects to unnecessary levels of review.

Project costs thresholds for certificate of need applications will shift from over \$15 million for a general hospital and \$6 million for all other facilities to over \$30 million for a general hospital and \$8 million for all other facilities.

Project cost thresholds were last raised in 2017; construction costs have more recently increased substantially. The amounts included in the proposal reflect an appropriate balance between the increased construction costs for large-scale projects and the desire to maintain sufficient oversight while reducing administrative barriers.

Certain review levels for some previously identified types of services and projects have been eliminated as they no longer require special consideration due to medical advancements. These projects will now be reviewed according to dollar cost thresholds and general provisions regarding impact on a facility's operating certificate.

The measures included in this streamlining initiative will continue to reflect the overall objective of the statutory and regulatory framework, as set forth in 10 NYCRR section 710.1(a), to help ensure that medical facilities are planned to achieve efficiency and economy of operation and care of high quality. At the same time, it will help support regulated providers in meeting heightened demands to be increasingly agile given ongoing health system reform and evolving trends in medicine. requirements and promote flexibility that supports efficiency and innovation.

COSTS:

Costs to Private Regulated Parties:

The proposed amendments will not increase costs for private entities subject to the requirements of PHL Article 28 and in fact are expected to have a favorable fiscal impact. Some applicants either would no longer need to submit a Certificate of Need application or would need to prepare a less complex application, meaning that they will pay less in construction fees associated with an application, which are required in higher amounts for applications requiring higher levels of review. These changes also should expedite the time for approval of projects and therefore minimize costs related to construction delays.

Costs to Local Government:

This proposal will not impact local governments unless they operate a hospital, in

which case they are likely to experience decreases in costs as noted above with respect to private entities.

Costs to the Department of Health:

This proposal is not anticipated to have a major fiscal impact on the Department. The annual impact on Certificate of Need construction fee revenues is entirely dependent on the total project costs and types of projects submitted and how many of them might fall within the narrow bands of cost threshold changes and programmatic changes proposed. As such, the impact would vary from year to year. Based on experience, the Department estimates the potential impact of this proposal to be in the range of \$200,000 to \$450,000 in reduced fee revenue out of \$8 million to \$12 million in total fees annually.

Costs to Other State Agencies:

The proposed regulatory changes will not result in additional costs to other State agencies.

Local Government Mandates:

The proposed regulatory amendments do not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments will impose no new reporting requirements, forms or other

paperwork. The amendments will reduce paperwork by shifting projects to lower levels of review or removing the requirement for the filing of a Certificate of Need application with respect to certain projects.

Duplication:

This rule does not duplicate any other law, rule, or regulation.

Alternatives:

The Department considered other monetary thresholds but ultimately determined that the amounts included in the proposal reflect an appropriate balance between the recognition of increased construction costs for large-scale projects and the desire to maintain sufficient oversight for purposes of promoting high quality services aligned with community need.

Federal Standards:

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules currently addressing the Certificate of Need process.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register and would apply to all construction applications submitted thereafter. Consequently, regulated parties should be able to comply with the proposed regulation as of its effective date.

Contact Person:

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**STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed rule will not have a substantial adverse impact on small businesses or local governments.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments will not impose an adverse impact on facilities in rural areas, and will not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of this proposed regulation.



Project # 251025-C
Stony Brook University Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: January 24, 2025

Executive Summary

Description

Stony Brook Medicine, under Stony Brook University Hospital (SBUH), an existing Article 28, Public 628-bed Hospital, requests approval to certify and construct a new Multi-Specialty Ambulatory Surgery Hospital Extension Clinic within leased space at 500 Commack Road, Commack, New York (Suffolk County). The extension clinic will consist of four (4) operating rooms (ORs), with the first phase equipping two (2) ORs and preparing two (2) additional rooms for future use. In addition to the proposed OR space, the facility will have a shared recovery area for sixteen (16) patients, comprised of fourteen (14) bays and two (2) private rooms.

The extension clinic will provide orthopedic, ophthalmology, urology, pain management, anesthesia, neurosurgery surgical services to patients currently being treated at Stony Brook University Hospital and their physician practices already at the proposed site. The extension clinic will ensure consistent convenience for patients, allowing the patients to attend pre- & post-procedure appointments in the same location as their procedures.

Syed Y A Shah, MD will serve as the Medical Director. The ASC will implement a policy for patient transfers to ensure backup and emergency services are accessible through SBUH, approximately 14.5 miles / 28 minutes from the proposed extension clinic. This new ASC will be known as Stony Brook Ambulatory Surgery Center at Commack.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval of this project allows SBUH to redistribute its ambulatory surgery procedures to the most appropriate setting and provide better continuity of care.

Program Summary

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

Financial Summary

Total project cost of \$19,405,375 will be met with \$108,135 in equity from operations, a loan of \$9,469,045 at an interest rate of 3.25% for a twenty-year term via the State University Construction Fund, a bank loan of \$6,093,448 at an interest rate of 8% for a twenty-year term, and landlord concessions of \$3,734,750.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,242,101	\$10,171,343
Expenses	<u>7,318,563</u>	<u>9,220,097</u>
Excess Revenues	\$923,538	\$951,246

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Acceptance by the Bureau of the Applicants response to the remaining open Engineering RFAI comments during Schematic Design/Design Development review phase. [AER]
3. Submission of a loan commitment via the State University Construction Fund loan that is acceptable to the Department of Health. [BFA]
4. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **March 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **December 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Reimbursable TPC shall be limited to \$15,670,625 reflecting the approved TPC less the landlord contribution of \$3,734,750. [CCC]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Stony Brook Medicine (SBM), under Stony Brook University Hospital (SBUH), submitted a Full Review CON application to seek approval for the construction of a multispecialty ambulatory surgical center extension clinic. The ASC will be within an existing building at 500 Commack Road, Commack, New York 11725 (Suffolk County). The Ambulatory Surgery Center will be situated within the Advanced Specialty Care Center in Commack, which also includes the Stony Brook Medicine Advanced Specialty Care Center, an existing multi-specialty practice that is currently non-Article 28. This new ASC will be known as "Stony Brook Ambulatory Surgery Center at Commack".

Background and Analysis

The service area consists of Suffolk County. The population of Suffolk County is projected to decrease to 1,488,885 by 2030 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Suffolk County	New York State
Total Population-2023 Estimate	1,525,680	19,872,319
Hispanic or Latino (of any race)	22.2%	19.6%
White (non-Hispanic)	63.2%	53.4%
Black or African American (non-Hispanic)	6.8%	13.6%
Asian(non-Hispanic)	4.2%	8.8%
Other (non-Hispanic)	3.6%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

In 2023, 95.4% of the population of Suffolk County had health coverage as follows:

Employer Plans	56.5%
Medicaid	12.1%
Medicare	13.1%
Non-Group Plans	13.2%
Military or VA	0.461%

Source: Data USA

According to the applicant, the proposed extension clinic is strategically located near the Long Island Expressway and the Northern State Parkway, in the same building as the Stony Brook Medicine Advanced Specialty Care Center in Commack, an existing multi-specialty practice that is currently non-Article 28. The Center will implement a policy for patient transfers to ensure backup and emergency services are accessible through SBUH, which is approximately 14.5 miles/28 minutes from the proposed center. The proposed center plans to offer ambulatory surgery services to patients currently receiving care at Stony Brook University Hospital and the Advanced Specialty Center at Commack. A small number of employees are expected to join the ASC staff, with some transferring from their existing on-campus ASC and others likely being recruited from accredited schools and training programs, such as the Health Sciences program at Stony Brook University. Additionally, the existing operating rooms at the main hospital will continue to serve patients with more complex cases.

Ambulatory Surgery within a 10-Mile Radius of Proposed Center

Facility Name	Type	Patient Visits		
		2021	2022	2023
St Catherine of Siena Hospital	Hospital	9,655	8,866	9,712
North Shore Surgi-Center	ASC	6,215	5,841	5,521
Good Samaritan Hospital Medical Center	Hospital	20,689	21,751	21,478
Long Island Ambulatory Surgery Center	ASC	12,057	14,555	16,891
Melville Surgery Center	ASC	4,273	4,223	4,330
South Shore Surgery Center	ASC	3,856	3,458	3,748
South Shore University Hospital	Hospital	4,242	5,580	6,482
The Center for Advanced Spine and Joint Surgery	ASC	Unavailable	835	147
Long Island Hand and Orthopedic Surgery Center, LLC	ASC	659	603	588
Total Visits		61,646	65,712	68,897

Source: HFIS and SPARCS

All of the facilities listed above provide multi-specialty ambulatory surgical services or at least one of the specialties proposed by the applicant in this project.

CON 231348 (Long Island Community Hospital at NYU Langone Health) was approved to establish a hospital extension clinic in Suffolk County and is located 20.5 miles/29 minutes away from this proposed site. Additionally, CON 212260 (SurgiCore Suffolk) received contingent approval to establish a multi-specialty ambulatory surgery center in Suffolk County and is located 8.5 miles/13 minutes away from this proposed site.

The number of projected visits is 2,798 in Year One and 3,626 in Year Three with Medicaid at 4.9% by the third year. The table below shows the applicant's projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins FFS	0	0.0%	0	0.0%
Comm Ins MC	1,315	47.0%	1,635	45.1%
Medicare FFS	953	34.1%	1,355	37.4%
Medicare MC	190	6.8%	266	7.3%
Medicaid FFS	7	0.3%	8	0.2%
Medicaid MC	169	6.0%	171	4.7%
Private Pay	19	0.7%	26	0.7%
Charity Care	56	2.0%	73	2.0%
Other (W/C, NF, Govt)	89	3.2%	92	2.5%

The hours of operation will be Monday through Thursday, 5:30 AM to 7:00 PM, and Friday 5:30 AM to 5:00 PM. The center will be licensed as a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

Conclusion

Approval of this project allows SBUH to redistribute its ambulatory surgery procedures to the most appropriate setting and provide better continuity of care.

Program Analysis

Project Proposal

Proposed Operator	State University of New York
To Be Known As	Ambulatory Surgery Center (*Stony Brook Ambulatory Surgery Center at Commack)
Site Address	500 Commack Road, Commack, New York 11725 (Suffolk County)
Specialties	Ambulatory Surgery - Multi Specialty
Hours of Operation	Monday through Thursday, 5:30 AM to 7:00 PM; and Friday 5:30 AM to 5:00 PM.
Staffing (1 st Year / 3 rd Year)	20.0 / 21.5
Medical Director	Syed Y A Shah, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Stony Brook University Hospital (SBUH) Located 14.5 miles / 28 minutes away

The proposed Ambulatory Surgery Center will be hospital-based and integrated into Stony Brook University Hospital. The ASC will implement a policy for patient transfers to ensure backup and emergency services are accessible through SBUH, which is located approximately 14.5 miles / 28 minutes from the proposed center. The proposed ASC will offer ambulatory surgery services to patients currently receiving care at Stony Brook University Hospital and from the Advanced Specialty Center at Commack.

The following tables show the projected FTEs in Year One and Year Three after completion of this project:

Position	Year One	Year Three
Management and Supervision	1.5	1.5
Technician and Specialist	3.5	4.0
Registered Nurses	8.0	8.0
Aides, Orderlies & Attendants	2.0	2.0
Clerical and Other Administrative	3.0	4.0
Housekeeping Aides	2.0	2.0
Totals	20.0	21.5

There will be no transfer of any office-based procedures to this Ambulatory Surgery Center, with cases shifting from the existing hospital-based ASC.

The Ambulatory Surgery Center submitted five (5) commitment letters from Ophthalmology physicians committed to providing the projected 850 procedures at the ASC.

Syed Y A Shah, MD will serve as the Medical Director for the Ambulatory Surgery Center. Currently, Dr. Shah serves as the Interim Chair of Anesthesiology and as the Director of the Stony Brook on-campus Ambulatory Surgery Center. Dr. Shah is also an Associate Medical Director of the Operating Room and is a Medical Director of the Pre- and Post Anesthesia Care Unit at SBUH.

In 2002, Dr. Shah joined the Stony Brook faculty as a Clinical Assistant Professor of Anesthesiology, and in 2013 Dr. Shah was promoted to Clinical Associate Professor.

Dr. Shah graduated from the Dow Medical College located in Karachi, Pakistan; completed a residency in Anesthesiology at NY Medical College in New York, and completed a fellowship in Cardiac Anesthesiology at SBUH in New York.

Integration with Community Resources

The Ambulatory Surgery Center will benefit community residents by reducing waiting times and enhancing quality of care through a specialized and highly trained staff and a state-of-the-art freestanding ambulatory surgery center. The medical staff will ensure that procedures performed at the facility conform with generally accepted standards of practice and that privileges granted are within the surgeon's scope of practice and expertise

Compliance with Applicable Codes, Rules, and Regulations

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

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

- The Department issued a Stipulation and Order dated October 9, 2017, and fined University Hospital (Stony Brook) \$2,000.00 based on deficiencies found during an inspection completed on November 9, 2016. Deficient practice was found in the area of Patient Rights.

Prevention Agenda

Stony Brook Medicine under Stony Brook University Hospital, a public hospital located in Suffolk County, is requesting approval for construction of a multi-specialty ambulatory surgery extension clinic in Commack, New York (Suffolk County), allowing patients to receive pre- and post-procedure appointments in the same location as their ambulatory surgery procedure. The proposed center, by providing surgical procedures locally, can reduce the need for residents to travel to distant hospitals, thereby improving access and reducing wait times for surgeries. This can lead to earlier interventions and better management of health conditions by enhancing patient convenience.

By expanding capacity for ambulatory, high-quality, and cost-effective care in a location convenient to the community, the project directly advances several local Prevention Agenda priorities, as identified through collaborative planning processes:

- **Chronic Disease Prevention and Management:** The ASC will support timely interventions and surgery for chronic and complex conditions (such as kidney disease, diabetes complications, and cancer), which are leading contributors to morbidity in the region. The hospital offers educational programs focusing on prevalent health concerns such as diabetes, cardiovascular disease, vaccines, and mental health awareness to educate and empower the community.

Stony Brook University Hospital is implementing a variety of interventions to enhance local public health priorities and elevate community well-being. Initiatives include conducting regular health screenings and vaccination drives to assist in the management of chronic diseases and increase immunization rates. Healthcare professionals participate in health fairs and community events across Suffolk County, providing screenings for blood pressure, cholesterol, and glucose, which often detect early warning signs of heart disease, stroke, and diabetes. Community clinics offer primary care and gynecological care for uninsured patients and offer periodic or regular screenings for prostate cancer, breast cancer, glaucoma, vascular disease, memory loss, anxiety, and osteoporosis, among others.

- **Mental Wellbeing and Patient Experience:** The new ASC is designed to be patient- and family-friendly, reducing the stress associated with travel and hospitalization, and offering support services as needed, aligning with Prevention Agenda objectives for mental wellbeing.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$19,405,375, further broken down as follows:

Renovation and Demolition	\$7,222,615
Design Contingency	361,131
Construction Contingency	722,262
Architect/Engineering Fees	150,000
Other Fees	1,372,188
Moveable Equipment	8,307,558
Telecommunications	1,161,486
CON Fee	2,000
Additional Processing Fee	<u>106,135</u>
Total Project Cost	\$19,405,375

The applicant's financing plan appears as follows:

Equity	\$108,135
Loan from the State University Construction Fund (SUCF) (3.25% for a twenty-year term)	\$9,469,045
Bank Loan (3.25% for a twenty-year term)	\$6,093,445
Landlord concessions (Equity)	<u>\$3,734,750</u>
Total	\$19,405,375

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
Commercial MC	\$4,179	\$5,495,106	\$4,058	\$6,634,740
Medicare FFS	\$1,807	1,721,668	\$1,744	2,362,612
Medicare MC	\$1,635	310,598	\$1,612	428,734
Medicaid FFS	\$1,411	9,874	\$1,398	11,182
Medicaid MC	\$1,509	254,941	\$1,479	252,829
Private Pay	\$4,105	77,986	\$3,903	101,490
Other	\$4,177	<u>371,298</u>	\$4,106	<u>379,756</u>
Total Revenues		\$8,242,101		\$10,171,343
Expenses:				
Operating	\$1,892.08	\$5,294,040	\$1,800.67	\$6,529,227
Capital	<u>\$723.56</u>	<u>\$2,024,523</u>	<u>\$742.10</u>	<u>\$2,690,870</u>
Total Expenses	\$2,615.64	\$7,318,563	\$2,542.77	\$9,220,097
Excess Revenues		\$923,538		\$951,246
Utilization: (Proc)		2,798		3,626

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

- The decrease of \$140/case in weighted average reimbursement from Year One to Year Three is attributable to greater growth in Medicare patient volume in ophthalmology, which is reimbursed at a lower per case rate than the weighted averages.
- The applicant has submitted physician referral letters in support of utilization projections.
- Expenses were based on the current Stony Brook University Hospital ambulatory surgery patient experience. Procedures currently being performed at the Hospital ASC were evaluated with the

Clinical Chair and Department Administrator to determine the volume and type of patients who could safely be seen at the new facility. A very conservative approach was taken to show only a portion of the current ambulatory volume to the new facility.

- Revenues were based on current reimbursement methodologies for ambulatory surgery services.

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

	<u>Year One</u>	<u>Year Three</u>
Commercial MC	47.00%	45.09%
Medicare FFS	34.06%	37.37%
Medicare MC	6.79%	7.34%
Medicaid FFS	0.25%	0.22%
Medicaid MC	6.04%	4.72%
Private Pay	0.68%	0.72%
Other	3.18%	2.55%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has provided a copy of the lease rental agreement and the sublease agreement, which is summarized below:

Lease Agreement

Date	December 26, 2024
Premises	243,288 square feet located at 500 Commack Road, Commack, New York.
Landlord	Steel Forest, LLC
Tenant	SB Clinical Practice Management Plan, Inc.
Term	20 years and three months after the landlord has substantially completed the Fifth Additional Space.
Rental	\$8.92 per sq. ft. (\$2,170,128 annually) in Year 1. Year 2 = \$13.92 per sq. ft (\$3,386,568 annually), each year thereafter the rent shall increase by 2%.
Provisions	The tenant shall pay for the real estate taxes, maintenance and utilities.

Sublease Agreement (Draft)

Date	February 28, 2025
Premises	19,500 square feet located at 500 Commack Road, Commack, NY.
Sublessor	SB Clinical Practice Management Plan, Inc.
Sublessee	Stony Brook University Hospital
Term	20 years and 3 months
Rental	\$487,500 annually with a 2% per annum increase.
Provisions	The sublessee shall be responsible for real estate taxes, utilities and maintenance.

The applicant has submitted an affidavit indicating that the sublease agreement will be an arm's length lease arrangement.

Capability and Feasibility

Total project cost of \$19,405,375, will be funded with equity from operations of \$108,135, a loan of \$9,469,045 at an interest rate of 3.25% for a twenty-year term from the State University Construction Fund, a bank loan of \$6,093,448 at an interest rate of 3.25% for a twenty-year term and landlord concessions of \$3,734,750, which will be in the form of equity. The applicant provided documentation indicating the landlord has the necessary funds for their equity contribution. The applicant has submitted a letter of interest in regard to the financing.

The working capital requirements for this application are estimated at \$1,536,682, which is equivalent to two months of third-year expenses. The applicant has sufficient funds to provide equity to meet the

working capital requirements. BFA Attachment A, 2023 Certified Financial Statements of Stony Brook University Hospital, indicates the availability of sufficient funds for the equity contributions.

The submitted budget indicates an excess of revenues over expenses of \$923,538 and \$951,246 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

As shown on Attachment A, the entity had a positive working capital position and a positive net asset position in 2023. The entity had an excess of revenues over expenses of (\$54,433,000) in 2023. Losses were due to a change in the Federal Disproportionate Share (DSH) reimbursement regulations, which resulted in the federal legislation disallowing DSH reimbursement for patients who had Medicaid as secondary insurance coverage. This change resulted in a \$53 million reduction in DSH revenue for 2023. The applicant has implemented the steps to improve operations. They include improving billing and collections by addressing issues like billing errors and denial management, increasing patient volume, increasing marketing efforts to attract more patients, ongoing contract renegotiations with payers including revisiting contracts with insurance providers to secure better reimbursement rates or terms, process improvements including streamlining operations, and reducing the utilization of expensive temporary labor.

Conclusion

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

Attachments	
BHFP Attachment	Map
BFA Attachment A	Financial Summary - 2023 Certified Financial Statements of Stony Brook University Hospital



Project # 251044-C
Delaware Valley Hospital Inc

Program: Hospital
Purpose: Construction

County: Delaware
Acknowledged: February 6, 2025

Executive Summary

Description

Delaware Valley Hospital (DVH), a 25-bed Critical Access Hospital (CAH) at 1 Titus Place, Walton, New York 13856 (Delaware County), is seeking approval to construct a new, four-story building (plus penthouse and basement) connected to the existing main hospital building.

DVH will move all 25 inpatient beds and services from their current locations to the new building.

The vacated space in the main hospital will be used by public agencies and private community-based organizations such as the Delaware County Public Health Service, the Delaware County Office for the Aging and the Delaware County Mental Health service, to implement a Medical Neighborhood model of care.

DVH will also add Outpatient Occupational Therapy and Outpatient Speech Language Pathology to its operating certificate. There will be no change to the number of licensed beds.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 516 inpatient discharges in Year One and 547 discharges in Year Three, with Medicaid at 15.70%. The applicant is also projecting 186,091 outpatient visits in Year One and 197,256 visits in Year Three with Medicaid at 21.18%.

Program Summary

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

Financial Summary

The total project cost of \$85,127,723 includes shell space of \$6,432,507. The project costs will be funded with a \$60,000,000 bank loan with a 30-year term at 6.5% interest. The remaining \$25,127,723 will be funded with equity.

	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Budget:			
Revenue	\$43,253,771	\$69,640,692	\$73,693,251
Expense	<u>\$33,421,675</u>	<u>\$59,231,308</u>	<u>\$60,825,196</u>
Net Income	\$9,832,096	\$10,409,384	\$12,868,055

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Architectural Design Development Drawings: Submission of architectural and life safety drawings, acceptable to the Department, as described in the Bureau of Architecture and Engineering Review Drawing Submission Guidelines DSG-1.0. [AER]
3. Engineering Design Development Drawings: Submission of mechanical, electrical, plumbing and fire protection drawings, acceptable to the Department, as described in the Bureau of Architecture and Engineering Review Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed bank loan acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **April 1, 2028**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **January 1, 2028**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Delaware Valley Hospital (DVH), a 25-bed Critical Access Hospital (CAH) at 1 Titus Place, Walton, New York 13856 (Delaware County), is seeking approval to construct a new, four-story building (plus penthouse and basement) on the hospital's campus. This new building will be connected to the main hospital building, creating a "Medical Neighborhood" model of care. DVH is a part of the United Health Services (UHS) health system. At the end of this project, DVH will also certify Therapy – Occupational O/P and Therapy – Speech Language Pathology O/P to its operating certificate. There will be no change to the total number of licensed beds.

DVH will relocate all 25 inpatient beds and services, including primary medical care, medical specialty services, physical therapy, laboratory, blood draw, and other support functions, from the current locations to the new building. The vacated space within the main hospital building will be used by public agencies and private community-based organizations such as the Delaware County Public Health Service, the Delaware County Office for the Aging, and the Delaware County Mental Health service, to support the Medical Neighborhood model of care.

A Medical Neighborhood is a comprehensive model designed to enhance the coordination and delivery of health care and social services by fostering a collaborative network of health care and social services in a single location. This project will also provide community space for health and wellness activities such as EMT/CPR training and other professional development activities, and support groups. Other clinical services currently located on the DVH campus, such as the emergency department, ambulatory surgery, imaging services, and pharmacy, will remain in place. Several non-clinical functions, including administration, dietary, housekeeping, and human resources, will also remain at their current location within the main hospital building. This project is part of DVH's Facility Master Plan and represents a significant commitment of the hospital to transform the delivery of health and social services, as well as a major modernization of the hospital's campus for years to come.

Background & Analysis

The primary service area (PSA) for this project includes the following zip codes: 13753, 13755, 13756, 13782, 13783, 12776, 13839, and 13856. The general service area is comprised of Delaware County. DVH is located within a Health Professional Shortage Area (HPSA) for dental, primary care, and mental health.

The population of Delaware County is estimated at 44,551 based on 2023 American Community Survey data and is projected to decrease to 42,076 by 2030 per projection data from the Cornell Program on Applied Demographics (PAD), a decrease of 5.6%. Demographics for the PSA and Delaware County are noted below, including a comparison with New York State:

Demographics	Primary Service Area	Delaware County	New York State
Total Population – 2023 Estimate	19,351	44,551	19,872,319
White (non-Hispanic)	90.0%	89.7%	53.4%
Hispanic or Latino (of any race)	4.0%	4.7%	19.6%
Black or African American (non-Hispanic)	2.2%	1.5%	13.6%
Asian (non-Hispanic)	1.2%	0.8%	8.8%
Other (non-Hispanic)	2.6%	3.3%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

In 2023, 95.5% of the population of Delaware County had health coverage as follows:

Employer Plans	37.8%
Medicaid	25.4%
Medicare	20.9%
Non-Group Plans	10.6%
Military or VA	0.731%

Source: Data USA

The table below shows the applicant's projected payor mix for inpatient and outpatient services for Years One and Three.

Applicant Projected Payor Mix				
Payor	Inpatient		Outpatient	
	Year One	Year Three	Year One	Year Three
Commercial	8.53%	8.59%	34.04%	34.04%
Medicare	75.00%	74.96%	43.44%	43.44%
Medicaid	15.70%	15.72%	21.18%	21.18%
Private Pay	0.77%	0.73%	1.34%	1.34%

Source: Applicant

Per the applicant, DVH provides charity care but does not pursue collection of amounts determined to qualify as charity care, and they are not reported as net patient service revenue. During the years ending December 31, 2023, and 2022, charity care was approximately \$195,000 and \$148,000, respectively.

DVH had 389 discharges in the current year and is projecting 516 discharges in Year One and 547 discharges in Year Three. On the outpatient side, DVH had 119,468 visits in the current year and is expecting 186,091 visits in Year One and 197,256 visits in Year Three.

Currently, DVH has 14 beds in double-bedded rooms (7 rooms) due to space limitations. This project will allow DVH to create 25 private rooms with en-suite bathrooms. Per the applicant, private rooms have been found to reduce hospital-acquired infections, enhance privacy, dignity, and interaction, and reduce patient falls. This project will also allow DVH to expand and offer specialty medical services by bringing more medical specialists to DVH by integrating primary care and specialty care services in one location, providing more coordinated and comprehensive care for area residents.

The table below shows the current and proposed services for DVH at the end of the project:

Current and Projected Services for Delaware Valley Hospital			
Current Services	Remove	Keep	Proposed
Ambulatory Surgery – Multi Specialty		X	
Clinic Part Time Services		X	
Emergency Department		X	
Medical Services – Other Medical Specialties		X	
Medical Services – Primary Care		X	
Medical Social Services		X	
Radiology – Diagnostic		X	
Swing Bed Program		X	
Therapy – Occupational O/P			X
Therapy – Physical O/P		X	
Therapy – Speech Language Pathology O/P			X

Source: HFIS, Applicant

DVH is licensed for 25 Special Use beds. The Special Use beds along with the Swing Bed Program, allow DVH to transition its beds from acute inpatient care to Skilled Nursing Facility care without the patient

leaving the hospital. There will be no changes to the number of licensed beds, and maintaining the 25 special use beds will be particularly useful, especially in a rural area like Delaware County.

Conclusion

Approval of this project will improve access to multiple health care and social services in a single location for area residents.

Program Analysis

Program Description

This project will enable DVH to implement the “Medical Neighborhood” model of care, which is the driving force behind the implementation of this project. A Medical Neighborhood is a comprehensive model designed to enhance the coordination and delivery of health care and social services by fostering a collaborative network of health care and social services in a single location. The Hospital has decided to share some office space within the new building on a temporal basis (once per week or once per month). No clinical services will be provided in the shared space. Instead, the Hospital will share the space as a community benefit offering (i.e., for education, resource referral, etc.) to address the social determinants of health of area residents. Delaware Valley Hospital has indicated they will meet all shared space requirements promulgated by the New York State Department of Health.

A total of 107,114 square feet of space will be constructed for the new building addition. In addition, a total of 3,657 square feet of existing space at the Hospital will be renovated to accommodate the new building addition.

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

Position	Year One	Year Three
Management and Supervision	18.9	18.9
Technician and Specialist	24.7	24.7
Registered Nurses	38.1	38.1
Licensed Practical Nurses	19.8	19.8
Aides, Orderlies & Attendants	10.1	10.1
Physicians	7.2	7.2
Nurse Practitioners	20.8	20.8
Social Workers and Psychologist	2.0	2.0
Physical Therapists and PT Assistants	8.2	8.2
Speech Therapists and Speech Assistants	1.0	1.0
Occupational Therapists and OT Assistants	1.8	1.8
Other Therapists and Assistants	1.3	1.3
Clerical and Other Administrative	38.5	38.5
Infection Control, Environment and Food Service	20.3	20.3
Other: Facilities/Courier/Procurement/Security	13.9	13.9
Other: Medical Records/ Health Information Management	5.0	5.0
Other: Pharmacist	4.1	4.1
Totals	235.7	235.7

Dr. Jeffrey Gray, MD, will continue to serve as the Medical Director at Delaware Valley Hospital. Dr. Gray has been the Chief Medical Officer for Delaware Valley Hospital since 2022, as well as the Vice President of Hospital Based Services for United Health Services Hospital. Dr. Gray has also been the Chair of the Department of Medicine since 2021, as well as the Chair of the Utilization Review Committee since 2018. Dr. Gray has also been the Medical Director for United Health Services since 2017 and works as a Clinical Assistant Professor at Upstate Medical Center, Binghamton Campus since 2013. Previously, Dr. Gray worked as a nocturnist at Wilson Hospital United Health Services from 2016-2017 and was a primary care physician from 2012-2016. Dr. Gray graduated from the University of California with a bachelor's degree in 1992 and went on to obtain a Special Masters in Physiology in 1993. Dr. Gray received a Medical Degree from New York Medical College in 1997 and completed an Internal Medicine Residency at the University of Arizona in 2000.

A relocation plan was signed on 03/07/2025.

Compliance with Applicable Codes, Rules, and Regulations

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

Prevention Agenda

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

- Prevent Chronic Diseases
- Promote Well-Being and Preventing Mental and Substance Use Disorders
- Promote a Healthy and Safe Environment
- Promote Healthy Women, Infants, and Children

The proposed project will advance the Prevention Agenda priorities of Preventing Chronic Diseases, Promoting Well-Being and Preventing Mental and Substance Use Disorders, Promoting a Healthy and Safe Environment, and Promoting Healthy Women, Infants and Children by allowing DVH to advance chronic disease prevention through community collaboration, improve healthcare delivery of mental health and substance use services, enhance community access to cooling centers, and build a collaborative network of care for the health of their patient populations, including women, infants, and children.

As per the latest available report, DVH spent \$420,333 on community health improvement services in 2022, representing 1.40 % of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The Total Project costs for construction, and acquisition of moveable equipment is estimated at \$85,127,723 and broken down between two subprojects as follows:

	<u>Subproject 1</u> <u>Article 28 Space</u>	<u>Subproject 2</u> <u>Shell Space</u>	<u>Total Project</u> <u>Cost</u>
New Construction	\$55,309,287	\$5,042,485	\$60,351,772
Renovation & Demolition	\$574,378		\$574,378
Site Development	\$1,278,513	\$115,362	\$1,393,875
Temporary Utilities	\$98,493	\$8,887	\$107,380
Design Contingency	\$5,311,820	\$479,037	\$5,790,857
Construction Contingency	\$1,716,716	\$151,275	\$1,867,991
Architect/Engineering Fees	\$4,020,093	\$362,740	\$4,382,833
Construction Manager Fees	\$2,548,918	\$229,994	\$2,778,912
Other Fees Consultant	\$473,523	\$42,727	\$516,250
Moveable Equipment	\$2,431,030		\$2,431,030
Total Basic Cost of Construction	\$73,762,771	\$6,432,507	\$80,195,278
Financing Cost	\$600,000		\$600,000
Interim Interest Expense	\$3,900,000		\$3,900,000
Total Project Cost w/o CON Fees	78,262,771	\$6,432,507	\$84,695,278
Application Fee	\$2,000		\$2,000
Processing Fee (0.0055 %)	<u>\$432,445</u>		<u>\$432,445</u>
Total Project Cost	\$78,695,216	\$6,432,507	\$85,127,723

Operating Budget

The applicant has submitted their Year One and Year Three operating budget, in 2025 dollars, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Inpatient Revenue</u>	<u>Per Visit</u>	<u>Total Revenue</u>	<u>Per Visit</u>	<u>Total Revenue</u>	<u>Per Visit</u>	<u>Total Revenue</u>
Commercial FFS	\$20,658	\$681,721	\$19,049	\$838,157	\$19,049	\$895,304
Medicare FFS	\$19,275	\$2,679,285	\$17,903	\$3,294,110	\$17,903	\$3,491,040
Medicare MC	\$20,876	\$3,193,952	\$19,344	\$3,926,879	\$19,344	\$4,159,009
Medicaid FFS	\$16,089	\$193,066	\$14,836	\$237,370	\$14,836	\$252,205
Medicaid MC	\$6,735	\$330,003	\$6,242	\$405,729	\$6,242	\$430,697
Private/Other	\$8,431	<u>\$25,293</u>	\$7,774	<u>\$31,097</u>	\$7,774	<u>\$31,097</u>
Inpatient Total Revenue		\$7,103,320		\$8,733,342		\$9,259,352
Inpatient Expenses						
Operating Expenses	\$12,562	\$4,886,655	\$15,037	\$7,759,167	\$14,656	\$8,016,754
Capital Expense	\$556	\$216,107	\$2,489	\$1,284,162	\$2,322	\$1,269,927
Total Expense:	\$13,118	<u>\$5,102,762</u>	\$17,526	<u>\$9,043,329</u>	\$16,978	<u>\$9,286,681</u>
Inpatient Net Income/(Loss)		\$2,000,558		(\$309,987)		(\$27,329)

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Outpatient Revenue</u>	<u>Per Visit</u>	<u>Total Revenue</u>	<u>Per Visit</u>	<u>Revenue</u>	<u>Per Visit</u>	<u>Revenue</u>
Commercial FFS	\$314.75	\$12,801,328	\$362.08	\$22,938,130	\$362.08	\$24,314,034
Medicare FFS	\$248.61	\$5,053,928	\$288.64	\$9,140,074	\$288.64	\$9,688,490
Medicare MC	\$244.25	\$7,708,907	\$283.80	\$13,952,743	\$283.80	\$14,789,953
Medicaid FFS	\$69.07	\$134,609	\$89.32	\$271,086	\$89.32	\$287,342
Medicaid MC	\$280.03	\$6,540,187	\$323.53	\$11,770,021	\$323.53	\$12,476,287
Private Pay/Other	\$243.80	\$390,568	\$283.31	\$706,858	\$283.31	\$749,355
All Other*		\$816,395				
Other Operating Revenues		\$763,591		\$187,500		\$187,500
Non-Operating Revenues		\$1,940,938		\$1,940,938		\$1,940,938
Outpatient Total Revenue		\$36,150,451		\$60,907,350		\$64,433,899

Expenses						
Operating Expenses	\$227.00	\$27,119,575	\$231.40	\$43,061,231	\$225.55	\$44,490,771
Capital Expense	\$10.04	\$1,199,338	\$38.30	\$7,126,748	\$35.73	\$7,047,744

Total Expense	\$237.04	\$28,318,913	\$269.70	\$50,187,979	\$261.28	\$51,538,515
Outpatient Net Income		<u>\$7,831,538</u>		<u>\$10,719,371</u>		<u>\$12,895,384</u>
Total Net Income		<u>\$9,832,096</u>		<u>\$10,409,384</u>		<u>\$12,868,055</u>

*All other revenues include \$816,395 in third-party adjustments and contracted pharmacy revenues in the current year.

The following is noted with respect to the budget:

- Utilization is expected to increase due to the number of medical specialists who will be brought into DVH from other facilities of United Health Services Hospitals, as well as the organic growth in volume experienced by DVH.
- The operating expenses and operating revenues for this project are based on historical experience of DHV in providing inpatient and outpatient health care services. This modernization effort will also allow the Hospital to expand its reach and continue its mission to improve the health of its communities.

Utilization for payor sources is projected below:

Inpatient:	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Commercial FFS	8.48%	8.53%	8.59%
Medicare FFS	35.73%	35.66%	35.65%
Medicare MC	39.33%	39.34%	39.31%
Medicaid FFS	3.08%	3.10%	3.11%
Medicaid MC	12.60%	12.60%	12.61%
Private Pay	<u>.78%</u>	<u>.77%</u>	<u>.73%</u>
Total	100.00%	100.00%	100.00%

Outpatient:	<u>Current Year</u>
	<u>Years 1&3</u>
Commercial FFS	34.04%
Medicare FFS	17.02%
Medicare MC	26.42%
Medicaid FFS	1.63%
Medicaid MC	19.55%
Private Pay	<u>1.34%</u>
Total	100.00%

Capability and Feasibility

The total project cost of \$85,127,723 includes shell space of \$6,432,507. The project costs will be funded with a \$60,000,000 bank loan from Kaufman, Hall, and Associates, LLC with a 30-year term at 6.5% interest. The remaining \$25,127,723 will be funded with equity.

The working capital requirement of \$4,567,254, based on two months of the third year's incremental expenses, will be satisfied through existing equity from ongoing operations. BFA Attachments A and B, 2022-2023 Certified Financial Statement of Delaware Valley Hospital, Inc. and the 1/1/2024-12/31/2024 Internal Financial Statements of Delaware Valley Hospital, Inc., shows sufficient liquid assets to meet the equity requirement for construction and the working capital requirements.

BFA Attachment A, 2022-2023 Certified Financial Statement of Delaware Valley Hospital, Inc. shows an average positive working capital position, average positive net asset position and average net income of \$5,998,092 for the period.

BFA Attachment B, 1/1/2024-12/31/2024 Internal Financial Statements of Delaware Valley Hospital, Inc., shows a positive working capital position, positive net asset position and a net income of \$11,637,174 for the period.

The budget projects a net income of \$10,409,384 and \$12,868,055 in Year One and Year Three, respectively. Revenues are based on the current Medicare fee schedule, the Medicaid APG rates and Commercial Rate experience of the Hospital. The budget appears reasonable.

Conclusion

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

Health Equity

Health Equity Impact Assessment Summary

The impacts of this project are entirely beneficial. While positive impacts exist for all medically underserved groups, the groups most affected are low-income people, LGBTQIA+ or other-than-cisgender people, people with disabilities, older adults, persons living with a prevalent infectious disease or condition, and persons living in rural areas. 94% of the Applicant's patients live in a rural zip code and the service area has larger ratios of older adults, low-income families, and people with disabilities than surrounding communities. Most of these groups will benefit from reduced travel and transportation barriers, and increased access to community space and social service organizations, such as the Delaware County Mental Health Service.

The new facility will house all inpatient and specialty services and support functions, improving access to care for people with disabilities who may have ambulatory difficulties. The private rooms with en-suite bathrooms will provide equitable and safe access to private spaces and provides the opportunity for gender-confirming room assignments, which impacts transgendered and gender non-conforming people. The new rooms will also improve care for those with a prevalent infectious disease or condition by reducing or eliminating cross-infection between patients. For older adults, increased access to preventative screening can improve early detection and health outcomes. No unintended impacts were identified.

Conclusion

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

Attachments

BFA Attachment A	2022-2023 Certified Financial Statements of Delaware Valley Hospital, Inc.
BFA Attachment B	1/1/2024-12/31/2024 Internal Financial Statements of Delaware Valley Hospital, Inc.
OHEHR Attachment	Health Equity Impact Assessment



Project # 251096-C

New York-Presbyterian Hospital - Columbia Presbyterian
Center

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: March 13, 2025

Executive Summary

Description

New York Presbyterian Hospital - Columbia Presbyterian Center (The Hospital), d/b/a NewYork-Presbyterian/Columbia University Irving Medical Center (NYP/CUIMC), requests approval to construct a new building to consolidate oncology and multi-specialty services on the campus at 622 West 168th Street, New York, NY (New York County). The building will be at the former site of the Harkness Eye Institute complex and connect to NYP's Morgan Stanley Children's Hospital through a service building. The building will be known as the Beacon Building.

The Beacon Building will be 16 stories with Article 28 and non-Article 28 space, as well as shell space to be fitted out at a later date. There will be no changes to the operating certificate.

OPCHSM Recommendation
Contingent Approval

Need Summary

The Beacon Building will consolidate and cancer care at the New York Presbyterian Columbia Campus, allowing the facility to address an increase in outpatient cancer visits. The applicant projects 128,052 visits in Year One and 130,618 in Year.

Program Summary

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

Financial Summary

The total project cost of \$1,247,529,143 will be met through an equipment lease of \$21,199,694, equity of \$354,329,449 from operations, and a bond financing of \$872,000,000 at an interest rate of 5% for a thirty-year term.

<u>Incremental Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Incremental Revenues	\$143,187,304	\$154,191,816
Incremental Expenses	<u>\$233,995,770</u>	<u>\$233,845,170</u>
Incremental	(\$90,808,466)	(\$79,653,354)

<u>Enterprise Budget:</u>	<u>Year One</u>	<u>Year Three</u>
(in thousands)		
Revenues	\$13,426,976,304	\$13,437,980,816
Expenses	<u>\$12,331,726,770</u>	<u>\$12,331,576,170</u>
Excess Revenues	\$1,095,249,534	\$1,106,404,646

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment lease that is acceptable to the Department of Health. [BFA]
3. Submission of bond financing that is acceptable to the Department of Health. [BFA]
4. Provide acceptable responses to all open BAER Schematic Design submission review comments. [AER]
5. Architectural Design Development Drawings: Submission of architectural and life safety drawings, acceptable to the Department, as described in the Bureau of Architecture and Engineering Review Drawing Submission Guidelines DSG-1.0. [AER]
6. Engineering Design Development Drawings: Submission of mechanical, electrical, plumbing and fire protection drawings, acceptable to the Department, as described in the Bureau of Architecture and Engineering Review Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **August 1, 2029**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **May 1, 2029**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Reimbursable TPC shall be limited to Article 28 program areas totaling \$851,859,584. [CCC]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

New York-Presbyterian Hospital – Columbia Presbyterian Center (the Hospital), d/b/a New York-Presbyterian/Columbia University Irving Medical Center (NYP/CUIMC), at 622 West 168th Street, New York, NY 10032 (New York County), is seeking approval to construct the Beacon Building on its campus and consolidate oncology and multispecialty services within the building. The new Beacon Building will be at the former site of the Harkness Eye Institute complex, which was recently demolished. The Beacon Building will have a physical connection to NYP's Morgan Stanley Children's Hospital via the Service Building. Through the approval of this project, there will be no changes to the Operating Certificate.

Background and Analysis

The applicant reports 66% of its patients coming from the primary service area of New York, Bronx, and Westchester counties, and 25% of patients coming from Queens, Brooklyn, and Rockland counties. The remaining patients come from the counties of Nassau, Suffolk, Orange, and Putnam.

The population of New York County is expected to increase to 1,727,631 by 2030, per projection data from the Cornell Program on Applied Demographics, an increase of 6.1%. Demographics for New York County are noted below, including a comparison with New York State.

Demographics	New York County	New York State
Total Population – 2023 Estimate	1,627,788	19,872,319
Hispanic or Latino (of any race)	24.3%	19.6%
White (non-Hispanic)	46.3%	53.4%
Black or African American (non-Hispanic)	12.5%	13.6%
Asian (non-Hispanic)	12.3%	8.8%
Other (non-Hispanic)	4.6%	4.6%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

In 2023, 95.7% of the population of New York County had health coverage as follows:

Employer plans	52.4%
Medicaid	19.3%
Medicare	11.0%
Non-group plans	12.8%
Military or VA plans	0.284%

Source: Data USA

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

Applicant Projected Payor Mix			
Payor	Current	Year One	Year Three
	Outpatient		
Commercial	31.46%	31.63%	31.60%
Medicare	49.00%	47.57%	47.64%
Medicaid	18.48%	19.51%	19.47%
Charity Care	1.00%	1.00%	0.99%
Other	0.06%	0.29%	0.29%
Total Visits	70,305	128,052	130,618

Since 2021, NYP/CUIMC has added nearly 30 medical oncologists across multiple specialties, including breast, endocrine, colorectal, hematologic malignancy, and neuro-oncology. More patients are transitioning to an outpatient setting due to advances in screening guidelines, technology, and treatment approaches.

According to the New York State Cancer Registry, the highest incidence cancer sites are for breast, prostate, lung, and colon. The table below shows the cancer incidence rate for these sites, as well as the pancreas and liver. Shaded areas below show boroughs/counties where the incidence is above the Statewide rate and within the applicant service area.

	Cancer Incidence rate per 100,000 population (2017-2021)					
	Breast	Prostate	Lung and Bronchus	Colon and Rectum	Pancreas	Liver and Intrahepatic Bile Duct
Bronx	112.4	144	41.7	34.6	13.1	12.9
Brooklyn	122.9	128.3	40.2	35.6	13.2	8.7
Manhattan	136.9	127.6	41.5	30.2	12.9	8.9
Queens	124.6	108.9	39.8	34.3	12.6	9.2
Staten Island	138.9	120.4	61.4	40.4	15.6	10.5
New York City	125.4	124.1	42	34.3	13.1	9.6
Westchester	144.2	138.8	43	32.2	15	7.5
Rockland	132	135.1	46.5	36.8	15	6.1
New York State	134.1	131.2	53.5	35.7	14.3	8.3

Source: Applicant and New York State Cancer Registry: Cancer Incidence and Mortality by County

Below is an overview of the Beacon Building, which will house radiation oncology, infusion services, ambulatory surgery, and diagnostic services. This consolidation of cancer services into the Beacon Building will enhance access, coordination, and continuity of care.

- Radiation Oncology:** NYP/CUIMC currently operates five linear accelerators (LINACs) for radiation therapy. The Hospital will replace three (3) of the five (5) machines with new machines that have improved technology. There will be no change to the total number of LINACs for the hospital at the completion of this project.
 - According to the applicant current utilization of radiation oncology services is at 75%, with 80-85 external beam treatments daily. The table below shows total radiation oncology treatments at NYP/CUIMC from 2019 to 2023. Treatment volumes decreased in 2022 and 2023 due to upgraded technology that enabled the Hospital to treat patients with fewer fractions (proportion of cancerous cells in a tumor containing a single-nucleotide variant) than previously. The number of unique patients continues to grow and is expected to increase further as additional oncologists and surgeons are recruited to the Hospital.

	2019	2021	2022	2023
Radiation/Oncology treatments	16,528	28,888	21,286	20,571

*Source: Applicant, 2020 volume not included due to the impact of the COVID-19 public health emergency.

- Infusion Services:** NYP/CUIMC currently operates 57 infusion chairs with 90% utilization, delivering more than 56,000 treatments in 2023. NYP/CUIMC provides an average of 200 treatments at three turns per chair per day. They have seen a 13.2% increase from 2019 to 2023.

The slowed volume increase is due partially to a lack of available capacity. The new building will allow the applicant to expand and modernize the current Infusion Center.

	2019	2021	2022	2023
Infusion Treatments	49,567	53,545	55,458	56,121

**Source Applicant: 2020 volume not included due to the impact of the COVID-19 public health emergency.*

- **Ambulatory Surgery Program:** The Beacon Building will house a dedicated ambulatory surgery center, modernizing surgical, endoscopy, and interventional services. The Hospital's 12 ambulatory surgery operating rooms (ORs) and four (4) endoscopy/bronchoscopy procedure rooms will relocate from the Milstein Building to the sixth and seventh floors of the new facility, which will also include 24 pre- and post-operative recovery rooms.
- **Outpatient Rehabilitation Services:** The Beacon Building will include physical, occupational, and speech therapy services, located near the clinic and infusion space.
- **Clinical Laboratory:** A dedicated clinical laboratory will serve Infusion and Oncology Services, providing rapid blood specimen-processing, analysis, and same-day results to support treatment decisions and office visits.
- **Ophthalmology:** A new and modernized space for the Harkness Eye Institute will be constructed on the 10th floor of the building.
- **Diagnostic Imaging Expansion:** The fourth floor and part of the fifth floor will house an extension clinic of Columbia/NewYork-Presbyterian Advanced Imaging, Inc. (CNYPAI), a diagnostic and treatment center (D&TC) that provides imaging services and is a related entity of the Hospital. A separate CON application will be submitted to certify this extension clinic of CNYPAI. The extension clinic will offer a comprehensive suite of imaging modalities, including MRI, PET/CT Scanners, CT Scanners, ultrasounds, breast ultrasounds, mammography machines, and Radiographic Fluoroscopy (R/F) machines.

Conclusion

The Beacon Building will consolidate and streamline cancer care at the New York Presbyterian Columbia Campus, allowing the facility to address an increase in outpatient cancer visits.

Program Analysis

Project Proposal

Operator	The New York and Presbyterian Hospital
Site	622 West 168th Street, New York, NY 10032 (New York County)
Site Address	622 West 168th Street, New York, NY 10032 (New York County)
Shift / Hours / Schedule	The proposed hours of operation will be Monday through Friday with staffing from 7AM to 10PM.
Current Services	Ambulatory Surgery – Multi Specialty Audiology O/P Cardiac Catheterization – Adult Diagnostic Cardiac Catheterization – Electrophysiology (EP) Cardiac Catheterization – Pediatric Diagnostic Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) Cardiac Surgery – Adult Cardiac Surgery – Pediatric Certified Mental Health Services O/P, Comprehensive Psychiatric Emergency Program Dental O/P Emergency Department Epilepsy Comprehensive Services Lithotripsy Medical Services – Other Medical Specialties, Medical Services - Primary Care, Radiology – Therapeutic Renal Dialysis – Acute Renal Dialysis – Chronic - 10 Therapy-Occupational O/P, Therapy-Physical O/P Transplant – Heart – Adult Transplant – Heart - Pediatric Transplant – Kidney, and Transplant - Liver
Staffing (1st Year / 3rd Year)	851.2 FTEs for 1 st and 856.9 3 rd year

The following table shows the projected FTEs in Year One and Year Three following completion of this project.

Staffing Categories	Current Year	First Year	Third Year
Management & Supervision	7.0	55.7	55.7
Registered Nurses	87.6	188.0	189.3
Physician's Assistants	0	42.7	42.9
Nurse Practitioners	15.4	31.8	32.0
Social Workers and Psychologist	1.0	3.0	3.0
Technician & Specialist	63.5	205.1	206.0
Aides, Orderlies & Attendants	21.8	44.4	45.5
Physical Therapists and PT Assistants	0	7.0	7.0
Occupational Therapists and OT Assistants	0	4.0	4.0
Speech Therapist and Speech Assistants	0	3.0	3.0
Other Therapists and Assistants	0	4.0	4.0
Infection Control, Environmental and Food Service	6.2	63.4	63.4
Clerical and Administrative	40.0	133.1	135.2
Other - Facilities	0	17.0	17.0
Other – Supply Chain	3.0	27.0	27.0
Other - Security	0	22.0	22.0
Totals	245.5	851.2	857

The Medical Director of the Beacon Building will be Dr. Frank Volpicelli, M.D.

Enforcement History

The Department issued a Stipulation and Order (S&O) dated 11/06/2017, and fined New York-Presbyterian/Queens \$2,000.00 based on deficiencies found during a validation survey completed on 05/10/2016. Deficient practices were found in the area(s) of patient rights.

Compliance with Applicable Codes, Rules, and Regulations

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

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

Prevention Agenda

New York - Presbyterian/Columbia University Irving Medical Center (NYP/CUIMC), located in New York County, is requesting approval for the construction of the Beacon Building to help consolidate oncology services for enhanced patient access and coordination of care in a single facility. The project aims to streamline healthcare access and delivery through a multidisciplinary approach to cancer care, improving health outcomes for their patient population.

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

- Prevent Chronic Diseases
- Promote Well-Being and Preventing Mental and Substance Use Disorders
- Promote Healthy Women, Infants and Children
- Prevent Communicable Diseases

The proposed project will advance the Prevention Agenda priority of Preventing Chronic Diseases by allowing NYP/CUIMC to engage with their community and faith-based partners, addressing cancer and chronic disease prevention and management through numerous interventions, such food insecurity screening and smoking cessation services, to support their patient populations and populations with health disparities.

As per the latest available report, NYP/CUIMC spent \$40,987,445 on community health improvement services in 2022, representing 0.48% of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment for Article 28 space and non-article 28 space, is estimated at \$1,247,529,143, broken down as follows:

	<u>Article 28</u>	<u>Non-Article 28</u>	<u>Total</u>
New Construction	\$559,064,935	\$259,702,980	\$818,767,915
Site Development	1,322,721	0	\$1,322,721
Design Contingency	36,100,037	45,776,754	\$81,876,791
Construction Contingency	18,050,019	22,888,377	\$40,938,396
Architect/Engineering Fees	26,454,410	33,545,589	\$59,999,999
Construction Manager Fees	1,143,314	533,966	\$1,677,280
Other Fees (Consultant)	8,752,001	7,543,608	\$16,295,609
Moveable Equipment	99,163,136	0	\$99,163,136
Telecommunications	42,165,707	0	\$42,165,707
Financing Costs	5,943,969	2,776,031	\$8,720,000
Interim Interest Expense	49,037,746	22,902,254	\$71,940,000
CON Fee	2,000	0	\$2,000
Additional Processing Fee	<u>4,659,589</u>	<u>0</u>	<u>\$4,659,589</u>
Total Project Cost	\$851,859,584	\$395,669,559	\$1,247,529,143

The Department has determined that allowable reimbursable project cost is \$851,859,584.

The applicant's financing plan appears as follows:

Equipment Lease	\$21,199,694
Equity (Operations)	\$354,329,449
Bond Financing (5% interest rate for a thirty-year term)	<u>\$872,000</u>
Total	\$1,247,529,143

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for the current year, Year One and Year Three operations reflecting expenses and revenues as a result of the move to the Beacon Building, summarized below:

	<u>Current Year</u> <u>(2023)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial MC	\$6,112	\$135,188,140	\$5,177	\$209,671,643	\$5,206	\$214,892,284
Medicare FFS	\$2,945	\$101,459,321	\$2,514	\$153,170,045	\$2,534	\$157,702,393
Medicaid MC	\$2,088	\$27,122,768	\$1,694	\$42,311,917	\$1,708	\$43,440,324
Charity Care	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$8,341	\$375,329	\$1,560	\$588,250	\$1,578	\$598,047
Other Revenues		<u>\$0</u>		<u>\$1,591,007</u>		<u>\$1,704,326</u>
Total Revenues		\$264,145,558		\$407,332,862		\$418,337,374
Expenses:						
Operating	\$2,285	\$160,647,573	\$2,428.52	\$310,979,910	\$2,432.87	\$317,776,460
Capital	<u>\$46</u>	<u>\$3,212,952</u>	<u>\$678.44</u>	<u>\$86,876,385</u>	<u>\$611.93</u>	<u>\$79,929,235</u>
Total Expenses	\$2,331	\$163,860,525	\$3,106.97	\$397,856,295	\$3,044.80	\$397,705,695
Excess Revenues		\$100,285,033		\$9,476,567		\$20,631,679
Visits		70,305		128,053		130,618

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

- The budget includes 245.4 FTEs for the Current Year, which reflects the Hospital's actual current staffing for services that will relocate to the Beacon Building. Year One (851.2 FTEs) and Year Three (856.9 FTEs) represent the projected staffing in the Beacon Building only for the proposed services, increased based on projected utilization.
- Current Year reflects the Hospital's actual revenue for services that will relocate to the Beacon Building. Year One and Year Three projections reflect revenue for the services in the Beacon Building only.
- Revenues are based on current reimbursement methodologies.

Utilization broken down by payor source for the Current Year, Year One and Year Three after project completion for the visits being relocated to the Beacon Building, are summarized as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	31.46%	31.63%	31.60%
Medicare FFS	49.00%	47.57%	47.64%
Medicare MC	18.48%	19.51%	19.47%
Charity Care	1.00%	1.00%	0.99%
Other	<u>0.06%</u>	<u>0.29%</u>	<u>0.29%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The total project cost of \$1,247,529,143 will be met through an equipment lease of \$21,199,694, bond financing of \$872,000,000 at an interest rate of 5% for a thirty-year term, and \$354,329,449 in equity from operations. The applicant submitted a letter of interest regarding the equipment lease and the bond financing.

The working capital requirements estimated at \$38,999,295, which is equivalent to two months of incremental Year One expenses, will be met with equity from operations. BFA Attachment A, 2022-2023 Certified Financial Statements of The New York Presbyterian Hospital, indicate the availability of sufficient funds to meet the equity contributions for the working capital and total project cost equity contributions. As shown on BFA Attachment A, the entity had a positive working capital position and a positive net asset position from 2023 through September 30, 2024. Additionally, the entity achieved an excess of revenues over expenses of \$757,053,000 in 2023 and \$1,138,673,000 on September 30, 2024.

The submitted budget indicates an excess of revenues over expenses of \$9,476,567 and \$20,631,679 in the Year One and Year Three, respectively. The submitted budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	Financial Summary- 2023 Certified Financial Statements and the September 30, 2024 Internal Financial Statements of New York Presbyterian Hospital
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Project # 242313-C
Samaritan Medical Center

Program: Hospital
Purpose: Construction

County: Jefferson
Acknowledged: January 22, 2025

Executive Summary

Description

Samaritan Medical Center (Samaritan), an existing, 290-bed acute care hospital at 830 Washington Street, Watertown (Jefferson County), New York, seeks approval for the certification of the "Cardiac Catheterization – Percutaneous Coronary Intervention" service, along with the requisite renovation of space to accommodate the service.

Samaritan will renovate 9,125 square feet of existing space on its campus and will construct a new building addition totaling 555 square feet on the first floor of the Medical Center. Samaritan will then equip the space for diagnostic cardiac catheterization and PCI services.

The proposed PCI lab will be operated under the "Clinical Sponsorship Model", whereby University Hospital SUNY Health Science Center (SUNY Upstate) will provide oversight of the proposed PCI program. SUNY Upstate is a full-service cardiac surgery and PCI provider at 750 East Adams Street, Syracuse (Onondaga County), New York.

Five interventional cardiologists have committed to providing services at Samaritan Medical Center through an agreement with VitalSolution, a national physician-led organization that delivers customized critical care services to hospitals. Of the committed physicians, only one currently practices in New York. The other physicians perform PCI procedures at various locations nationally. They will move to the region and perform PCI procedures at SMC, with one of them serving as Medical Director for the PCI service. VitalSolution will also provide technical staff, including cardiac catheterization laboratory

nurses and technicians, and administrative support, such as logistics and scheduling.

Jasdeep Dalawari, M.D will serve as the Medical Director for the PCI services. SUNY Upstate, approximately 69.8 miles/1 hour and 7 minutes from SMC, will provide oversight of the PCI program and serve as the cardiac surgery backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 107 total PCI procedures (43 emergency) in Year One and 274 total PCI (61 emergency) procedures by Year Three.

Program Summary

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

Financial Summary

The total project cost of \$11,171,256 will be funded with cash equity from SMC.

<u>Budget:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$335,883,968	\$341,998,691	\$351,223,925
Expenses	<u>323,979,798</u>	<u>332,258,811</u>	<u>331,343,504</u>
Net Income	\$11,904,170	\$9,739,880	\$19,880,421

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of a commitment on the part of the facility to provide regular volumes and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department and the New York State Cardiac Advisory Committee. [HSP]
5. Submission of an agreement, acceptable to the Department, which indicates the applicant agrees to report the performance of any diagnostic or interventional cardiac catheterization conducted both on an in-patient or out-patient basis to SPARCS. The in-patient procedures are reported in the SPARCS in-patient master file while the out-patient procedures would be reported through the ambulatory surgery file of SPARCS. [HSP]
6. Submission of an executed Master Services Agreement acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **April 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **January 1, 2027**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Conditional on performing a minimum of 36 emergency Percutaneous Coronary Interventions per year of operations in accordance with Regulation 405.29 (e)(2)(iv) minimum workload standards. [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Samaritan Medical Center (SMC), a 295-bed hospital at 830 Washington Street, Watertown, New York 13601 (Jefferson County), is seeking approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and perform requisite renovations to accommodate the service. There are currently no PCI providers in Jefferson County or the three neighboring counties of Oswego, Lewis, and St. Lawrence. The closest hospitals with PCI services to Samaritan are in Syracuse, New York (Onondaga County).

Through this project, SMC has entered into a “Clinical Sponsorship Model” with University Hospital SUNY Health Science Center (SUNY Upstate) that follows the regulatory requirements of NYCRR 10 Sections 709.14 and 405.29. SUNY Upstate will provide oversight for the proposed PCI program. SUNY Upstate is a full-service cardiac surgery and PCI provider in Syracuse (Onondaga County). It will also serve as the cardiac surgery backup provider to SMC. SUNY Upstate is located at 750 East Adams Street in Syracuse, approximately 69.6 miles and a 1 hour 7-minute drive from SMC.

Background & Analysis

The primary service area for this project is Jefferson County, and the relevant service area also includes several zip codes in Oswego, Lewis, and St. Lawrence Counties. SMC is located within a Health Professional Shortage Area (HPSA) for dental, primary care, and mental health.

The population of Jefferson County is projected to decrease to 114,290 by 2030 per projection data from the Cornell Program on Applied Demographics (PAD), a decrease of 1.6%. The population aged 65 years and over was 14.6% of the total population in 2023. By 2030, Cornell PAD, estimates this cohort will be 15.6% of the total population, an increase of 1.0%. Demographics for the primary service area are noted below including a comparison with New York State:

Demographics	Jefferson County	New York State
Total Population – 2023 Estimate	116,130	19,872,319
White (non-Hispanic)	80.8%	53.4%
Hispanic or Latino (of any race)	7.3%	19.6%
Black or African American (non-Hispanic)	4.6%	13.6%
Asian (non-Hispanic)	1.8%	8.8%
Other (non-Hispanic)	5.5%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

In 2023, 94.2% of the population of Jefferson County had health coverage as follows:

Employer Plans	33.2%
Medicaid	20.6%
Medicare	10.8%
Non-Group Plans	17.3%
Military or VA	12.3%

Source: Data USA

The table below shows the applicant's projected payor mix for inpatient and outpatient services for Years One and Three.

Applicant Projected Payor Mix				
	Inpatient		Outpatient	
Payor	Year One	Year Three	Year One	Year Three
Commercial FFS	13.7%	13.8%	27.3%	27.3%
Commercial MC	0.1%	0.1%	0.6%	0.6%
Medicare FFS	18.3%	18.5%	18.0%	18.0%
Medicare MC	16.6%	16.7%	16.1%	16.1%
Medicaid FFS	2.8%	2.8%	1.1%	1.1%
Medicaid MC	22.3%	22.2%	22.8%	22.8%
Private Pay	2.2%	2.1%	0.9%	0.9%
Charity Care	1.4%	1.4%	0.9%	0.9%
All Other	22.6%	22.3%	12.3%	12.3%

Source: Applicant

As background, Samaritan Medical Center began operating a diagnostic cardiac catheterization laboratory in December 2001. Initially, the program grew and had 400 cases at its peak. However, because the cardiac catheterization laboratory only performed diagnostic procedures, patients were forced to travel to Syracuse for interventional procedures. Patients and doctors typically prefer to perform diagnostic catheterization procedures in a facility that also offers PCI in the event the case requires it. These issues led to a significant reduction in volume at SMC with annual volume lower than the minimum of 200 diagnostic cases. In addition, at that time, the Department required a hospital to perform 500 annual diagnostic cardiac catheterization procedures before considering a CON review to add PCI services. Consequently, SMC was unable to add PCI service, and at the advice of the Department, ceased providing the diagnostic cardiac catheterization service. Since then, the Department revised its programmatic requirements for PCI providers as research indicated that outcomes for PCI providers with no cardiac surgery on-site were no different than outcomes for PCI providers with cardiac surgery on-site.

Five interventional cardiologists have committed to providing services at Samaritan Medical Center through an agreement with VitalSolution, a national physician-led organization that delivers customized critical care services to hospitals. Of the committed physicians, only one currently practices in New York. The other physicians perform PCI procedures at various locations nationally. They will move to the region and perform PCI procedures at SMC, with one of them serving as Medical Director for the PCI service. VitalSolution will also provide technical staff, including cardiac catheterization laboratory nurses and technicians, and administrative support, such as logistics and scheduling.

Samaritan projects 107 PCI procedures in Year One (43 emergency) and 274 PCI procedures in Year Three (61 emergency).

In 2023, Jefferson County residents received 202 total PCI treatments (141 emergency) as classified under New York Title 10 Cardiac Services Regulations 709.14. Of these, no PCI procedures were performed in Jefferson County, all residents were treated outside of the county.

The table below shows hospitals where PCI treatments were performed for Jefferson County residents:

2023 Total/Emergency PCIs Performed on Jefferson County Residents				
Hospital Name	County	Distance/Time from Applicant	Total Cases	Emergency
St. Joseph's Hospital Health Center	Onondaga	69 miles/1 hr 8 min	155	102
University Hospital SUNY Health Science Center	Onondaga	69.6 miles/1 hr 7 min	27	22
Crouse Hospital	Onondaga	69.8 miles/1 hr 8 min	9	7
St. Elizabeth Medical Center	Oneida	82 miles/1 hr 37 min	1	0
Cayuga Medical Center at Ithaca	Tompkins	128 miles/2 hr 28 min	1	1
Strong Memorial Hospital	Monroe	149 miles/2 hr 32 min	1	1
Albany Medical Center	Albany	171 miles/3 hr 1 min	7	7
Buffalo General Medical Center	Erie	210 miles/3 hr 22 min	1	1

Source: Cardiac Services; Google Maps 2025 (Travel times displayed assume average travel conditions)

Conclusion

Approval of this project will provide enhanced access to diagnostic cardiac catheterization and PCI procedures for local residents, improve cardiac health outcomes, and quality oversight of procedures performed in the new laboratory.

Program Analysis

Program Description

Samaritan Medical Center (Samaritan), an existing, 290-bed acute care hospital at 830 Washington Street, Watertown (Jefferson County), New York 13601, seeks approval for the certification of Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) services, along with the requisite renovation of space to accommodate the service. The proposed PCI-capable cardiac catheterization laboratory at will serve only adults and will be an essential resource for the highly rural North Country region.

Through this project, SMC will enter a Master Services Agreement with Physician Medical Services of New York, P.C. d/b/a VitalSolution to provide Physician Services. VitalSolution will provide a minimum of three (3) interventional cardiology physicians who will perform PCI at SMC. Physicians from VitalSolution will meet all requirements related to PCI providers as per 10 NYCRR Sections 709.14 and 405.29. In addition to the provision for interventional cardiologists, VitalSolution will provide administrative services that include but are not limited to: (1) recruiting interventional cardiologists; (2) scheduling the interventional cardiologists at Samaritan; (3) logistics; (4) maintaining physician licensure and credentialing; and (5) all other administrative duties required for the physicians to perform physician services at SMC. For non-Physician Staff Services, VitalSolution will provide technical staff members that include cardiac catheterization laboratory nurses and technicians. These individuals will be on-site at SMC for 40 hours per week but will be on-call on a 24/7/365 basis. In addition, VitalSolution will provide a cardiac catheterization laboratory manager to assist with the development and implementation of policies, procedures, protocols and practices to ensure compliance with all applicable regulations, including 10 NYCRR Sections 709.14 and 405.29. The manager will be on-site for 40 hours per week and will have some level of on-call hours. VitalSolution will provide SMC staff of the proposed PCI-capable cardiac catheterization program with standardized orientation and training, and all protocols, policies and procedures that will be put in place at Samaritan Medical Center for these services will be standardized.

Five (5) interventional cardiologists, Nurilign (Nate) Bulcha, M.D. Jasdeep Dalawari, M.D. Khurram Liaqat, M.D. Ali Homayuni, M.D. and Rocco Grella, M.D. have committed to providing PCI procedures at the proposed PCI-capable cardiac catheterization laboratory. Of these five (5) interventional cardiologists, only Dr. Grella currently practices within New York State. The other interventional cardiologists perform PCI procedures at various locations throughout the United States. They will move to the region and perform PCI procedures at 12 SMC through an Agreement between SMC and VitalSolution. Dr. Dalawari will serve as the Medical Director for the PCI service at SMC.

Michael Briggs will serve as a Data Manager for the Cardiac Catheterization Laboratory. This individual will have special training in the clinical criteria used in the modules of the Cardiac Reporting System. Mr. Briggs will work with SMC's Medical Director for PCI services, Dr. Dalawari, to ensure accuracy and timely reporting of Cardiac Reporting System data to the NYSDOH.

SMC will meet the minimum volume standard within its PCI program, with 151 STEMI cases originating from the Emergency Department in 2023 (average of 135 per year over the past four years). SMC expects to meet the minimum standard of 36 emergency PCI cases, per Section 405.29 and Section 709.14 of 10 NYCRR.

SMC confirms that a heart disease program, consistent with the recommendations of the Cardiac Advisory Committee and the New York State Department of Health, as outlined in 10 NYCRR Section 709.14, will be put in place.

SMC commits to serving the medically indigent and patients regardless of the source of payment. In fact, the Medical Center has a strong history of serving the medically indigent and traditionally medically underserved populations. To this end, individuals covered by Medicaid at Samaritan comprised 25.4% of total inpatient discharges and 23.9% of total outpatient visits to the Samaritan Medical Center in 2023. The Medical Center provides care to patients who meet certain criteria under its charity care policy without charge or at amounts less than its established rates.

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

Staffing	Year One	Year Three
Management and Supervision	100.83	100.83
Technician and Specialist	175.62	175.87
Registered Nurses	356.68	356.93
Licensed Practical Nurses	74.70	74.70
Aides, Orderlies and Attendants	167.71	167.71
Physicians	42.09	42.09
PGY Physicians	13.52	13.52
Physicians' Assistants	16.52	16.52
Nurse Practitioner	17.12	17.12
Nurse Midwife	2.99	2.99
Social Workers and Psychologists	17.42	17.42
Physical Therapists and PT Assistants	10.62	10.62
Occupational Therapists and OT Assistants	5.63	5.63
Speech Therapists and Speech Assistants	2.80	2.80
Other Therapists and Assistants (Respiratory Therapists)	95.29	95.29
Infection Control, Environment and Food Service	133.83	133.83
Clerical and Other Administrative	337.42	337.42
Other: (Miscellaneous)	33.54	33.54
Total	1604.33	1604.83

Jasdeep Dalawari, M.D. will serve as the Medical Director for the proposed PCI service at SMC. Dr. Dalawari is Board-Certified in Internal Medicine and Emergency Medicine, with sub-certifications in interventional cardiology and cardiovascular disease. Dr. Dalawari has been an Interventional Cardiologist at Dalawari Medical Services, LLC, since 2017. Prior to this, Dr. Dalawari was an Interventional Cardiologist at James River Cardiology from 2014-2017. Dr. Dalawari graduated from Louisiana State University with a bachelor's degree in 1996 and a Doctor of Medicine in 2000. Dr. Dalawari graduated from Virginia Commonwealth University with a Master of Science in Health Administration in 2009. Dr. Dalawari completed an Internal Medicine/Emergency Medicine Residency at Christiana Care Health System in 2005 and went on to complete a Cardiology Fellowship at Medical College of Virginia in 2008. In 2009, Dr. Dalawari completed an Interventional Cardiology Fellowship at the Medical College of Virginia.

Compliance with Applicable Codes, Rules, and Regulations

Based on the most recent surveillance information this facility is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules, and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

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

Prevention Agenda

Samaritan Medical Center (SMC), in Jefferson County, requests approval to certify the “Cardiac Catheterization – Percutaneous Coronary Intervention” service and supporting renovation efforts. The project will improve patient access to cardiac catheterization and percutaneous coronary intervention (PCI) services by reducing the travel time required to find nearby facilities.

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

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

The proposed project will advance the Prevention Agenda priority of Preventing Chronic Diseases and Promoting Well-Being and Preventing Mental and Substance Use Disorders by allowing SMC to increase local access to cardiac catheterization and PCI services for their community members.

As per the latest available report, in 2022, SMC spent \$231,430 on community health improvement services, representing 0.08 % of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Costs and Financing

The project costs for renovation and moveable equipment are estimated at \$11,171,256. The costs are broken down as follows in 2025 dollars:

New Construction	\$415,208
Renovation & Demolition	4,610,417
Asbestos Abatement or Removal	134,375
Design Contingency	591,250
Construction Contingency	591,250
Architect/Engineering Fees	530,000
Construction Manager Fees	200,000
Other Fees	53,750
Moveable Equipment	3,981,910
Application Fee	2,000
Processing Fee	<u>61,095</u>
Total Project Cost with fees	\$11,171,256

Total project cost of \$11,171,256 will be funded with equity from SMC. BFA Attachments A and B show that SMC has sufficient funds to fund the equity contribution for this project.

Operating Budget

The applicant has provided the Current Year (2023) results, and the First- and Third-year operating budget, in 2025 dollars. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Revenues						
<u>Inpatient:</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Commercial FFS	\$10,042.22	\$12,331,844	\$10,441.81	\$13,198,449	\$10,819.27	\$14,065,054
Commercial MC	\$14,128.83	169,546	\$14,128.83	169,546	\$14,128.83	169,546
Medicare FFS	\$17,464.16	28,833,326	\$17,589.55	29,831,880	\$17,711.04	30,852,624
Medicare MC	\$11,000.74	16,424,106	\$11,200.13	17,192,195	\$11,380.13	17,923,708
Medicaid FFS	\$1,235.99	317,649	\$1,352.22	350,224	\$1,466.66	382,799
Medicaid MC	\$5,355.41	10,983,951	\$5,437.16	11,244,047	5,522.26	11,519,443
Private Pay	\$737.53	143,819	\$780.81	153,819	\$802.12	158,819
All Other	\$6,467.36	13,503,845	\$6,486.89	13,570,573	\$6,506.35	13,637,301
Less: Bad Debt		<u>(3,344,266)</u>		<u>(3,691,774)</u>		<u>(3,513,211)</u>
Total IP Revenue		\$79,363,820		\$82,018,959		\$85,196,083
Revenues						
<u>Outpatient:</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$1,169.53	\$112,860,911	\$1,172.58	\$114,041,456	\$1,177.78	\$116,098,040
Commercial MC	\$1,318.59	3,022,202	\$1,318.34	3,045,360	\$1,317.92	3,085,243
Medicare FFS	\$638.72	40,644,621	\$647.70	41,539,195	\$663.01	43,097,080
Medicare MC	\$478.65	27,191,022	\$482.90	27,647,213	\$490.15	28,442,728
Medicaid FFS	\$465.51	1,749,845	\$476.04	1,803,231	\$494.52	1,898,958
Medicaid MC	\$375.57	30,285,422	\$377.09	30,646,593	\$379.69	31,275,785
Private Pay	\$890.30	2,775,964	\$914.29	2,872,694	\$956.36	3,046,002
All Other	\$506.90	21,927,851	\$513.39	22,382,721	\$524.47	23,175,724
Less: Bad Debt		<u>(5,866,996)</u>		<u>(5,928,037)</u>		<u>(6,021,024)</u>
Total OP Revenue		\$234,590,842		\$238,050,426		\$244,098,536
Total Revenues:		\$313,954,662		<u>\$320,069,385</u>		<u>\$329,294,619</u>
Other Oper. Rev.		21,432,386		21,432,386		21,432,386

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Total Op. Rev.	\$335,387,048	\$341,501,771	\$350,727,005
Non-Oper. Rev.	496,918	496,918	496,918
Total Proj. Rev.	\$335,883,966	\$341,998,689	\$351,223,923
Expenses:			
Operating	\$306,500,058	\$313,503,399	\$312,588,092
Capital	<u>17,479,740</u>	<u>18,755,412</u>	<u>18,755,412</u>
Total Expenses	\$323,979,798	\$332,258,811	\$331,343,504
Net Income/(Loss)	<u>\$11,904,170</u>	<u>\$9,739,880</u>	<u>\$19,880,421</u>
Total IP Disc.	9,102	9,253	9,403
Cost per Disc.	\$16,102.23	\$16,215.26	\$15,947.93
Total OP Visits	353,158	355,925	360,747
Cost per Visit	\$502.37	\$511.96	\$502.80

The following is noted with respect to the operating budget:

- Revenues and rate assumption for inpatient and outpatient services is based on the current experience of the existing cardiac catheterization lab volume of SUNY Upstate, VitalSolution and SMC.
- Other operating revenue sources include: \$9,149,388 340B Program, \$6,674,631 in grants and other incentives, \$2,995,559 in sold services, \$790,456 in rental income, \$672,324 in cafeteria income, \$665,688 in miscellaneous income, and \$484,340 in other income/fees/rebates.
- The number and mix of staff were based upon the experience of SMC in providing services to its patients.
- The Year One incremental loss is the result of start-up costs attributable to the use of contracted staff for leadership support, RN support, and radiology tech support from VitalSolution. Contracted expenses are projected at \$1,831,040 in Year One and will be eliminated in Year Three of operations as SMC's own staff are expected to be able to work independently after 12 months.
- Payor mix is based upon the historical payor mix for SMC.
- The projected utilization and staffing for this project are based upon the experience of VitalSolution and SUNY Upstate in providing cardiac catheterization laboratory procedures, including PCI.
- SMC projects to perform 107 PCI procedures in Year One (43 emergency) and 274 PCI procedures in Year Three (61 emergency).

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

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Inpatient:</u>	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Commercial-FFS	1,228	13.49%	1,264	13.66%	1,300	13.83%
Commercial-MC	12	0.13%	12	0.13%	12	0.13%
Medicare-FFS	1,651	18.14%	1,696	18.33%	1,742	18.53%
Medicare-MC	1,493	16.40%	1,535	16.59%	1,575	16.75%
Medicaid-FFS	257	2.82%	259	2.80%	261	2.78%
Medicaid-MC	2,051	22.53%	2,068	22.35%	2,068	22.18%
Private Pay	195	2.14%	197	2.13%	198	2.10%
Charity	127	1.39%	130	1.40%	133	1.41%
All Other	<u>2,088</u>	<u>22.94%</u>	<u>2,092</u>	<u>22.61%</u>	<u>2,096</u>	<u>22.29%</u>
Total	9,102	100.00%	9,253	100.00%	9,403	100.00%

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Outpatient:</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial-FFS	96,501	27.33%	97,257	27.33%	98,574	27.33%
Commercial-MC	2,292	0.65%	2,310	0.65%	2,341	0.65%
Medicare-FFS	63,634	18.02%	64,133	18.02%	65,002	18.02%
Medicare-MC	56,808	16.09%	57,253	16.09%	58,029	16.09%
Medicaid-FFS	3,759	1.06%	3,788	1.06%	3,840	1.06%
Medicaid-MC	80,639	22.83%	81,271	22.83%	82,372	22.83%
Private Pay	3,118	0.88%	3,142	0.88%	3,185	0.88%
Charity	3,148	0.89%	3,173	0.89%	3,215	0.89%
All Other	<u>43,259</u>	<u>12.25%</u>	<u>43,598</u>	<u>12.25%</u>	<u>44,189</u>	<u>12.25%</u>
Total	353,158	100.00%	355,925	100.00%	360,747	100.00%

Clinical Sponsorship Agreement

The applicant has provided an executed cardiac catheterization laboratory clinical sponsorship agreement, the terms of which are summarized as follows:

Date:	April 26, 2024
Hospital (SMC):	Samaritan Medical Center
Hospital (UUH):	State University of New York (SUNY) acting through and on behalf of its Upstate University Hospital (UUH)
Term:	20-years from Commencement Date
Program:	Establish a percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory at SMC and to offer a cardiac catheterization program primarily through the cardiac catheterization lab and whereas the SMC is not, but UUH is, a cardiac surgery center.
Purpose:	The parties (SMC, SUNY, and UUH) desire to collaborate in the operation of a high-quality cardiac catheterization laboratory and program at the SMC and to comply with all regulatory requirements, and specifically to have UUH provide their respective portions of the joint obligations of the parties in connection with the program.
Compensation:	None; if the hospital (SMC) desires to obtain additional services from UUH in conjunction with the operation of the cardiac catheterization laboratory or the program, the parties shall negotiate a mutually acceptable fair market value fee for such services.

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Master Services Agreement

The applicant has provided an executed consulting services agreement, the terms of which are summarized as follows:

Company:	Physician Medical Services of New York, P.C.
Hospital:	Samaritan Medical Center
Term:	3-years from Commencement Date, with an automatic renewal for an additional 3-years, unless a written notice of non-renewal is provided 150 days in advance of renewal date.
Professional Services (Physician Services):	<p>At the request of the Hospital, the company shall provide:</p> <p>(1) Physicians and Providers to provide the professional health care services on a regularly scheduled basis; and</p> <p>(2) certain support services</p> <p>Physician Services generally includes clinic and outpatient interventional cardiology services, diagnostic imaging services and reading of EKG and related imaging results, echocardiograms, nuclear imaging including CTA/MRA, and supervision of stress tests; hospital rounding and consultations; catheterization laboratory procedures specifically diagnostic and interventional cardiology services; and peripheral vascular procedures and device implantation and interrogation services within Physician's scope of practice and specifically includes: i) interventional cardiology coverage twenty-four (24) hours a day, seven (7) days a week and three hundred sixty-five (365) days per year for PCI and STEMI coverage and ii) outpatient cardiology services during regular business hours</p>
Administrative Services:	<p>The Company will also provide Administrative Services which shall include, but is not limited to:</p> <p>(1) recruiting physicians(s) to provide the physician services</p> <p>(2) scheduling physician(s) with Hospital</p> <p>(3) logistics</p> <p>(4) maintaining physician licensure and credentialing; and</p> <p>(5) all other administrative duties required for the physician(s) to provide physician services to Hospital.</p>
Fee:	<p>Physician Services Fee: \$3,048,606 per year</p> <p>Administration Fee: \$365,095 per year</p> <p>Productivity Compensation: \$75.00 per work relative value unit (WRVU) generated over the productivity threshold</p> <p>Additional Physician Coverage: \$5,361.36 per physician per day for additional interventional cardiology physician service</p> <p>\$4,861.44 per physician per day for additional general cardiology</p>
Non-Physician Staff Services:	<p>Technical Staff: Perform the technical duties necessary to operate a cath lab under supervision of Hospital during standard shift hours or when called to return to the Hospital during a call coverage shift.</p> <p>Manager Staff: for the initial twelve (12) months of this agreement beginning on or before the start date. Duties include assist the Hospital to develop and implement policies, procedures, protocols and practices to ensure quality cath lab services and compliance with the state and federal standards and regulations, ensure that all technical staff have, and maintain during the term, all licenses, permits, certifications, registrations, accreditations and approvals as are required by law for such employees and agents.</p>

Consulting Services:	Company shall provide consulting services as appropriate for the operation of hospital's cardiology service line including: (1) Administrative duties: assisting with strategic, financial and operational planning for future cardiology services provided, development and operation of capital and operating budgets, with special regard to new technologies, equipment, supplies and management information systems, assist with the monitoring of the implementation of the strategic plan for cardiology services, identifying service line staffing and equipment needs, monitor quality and satisfaction survey results of service line; work with Hospital to develop and implement corrective action plans and process improvements. (2) Operational duties: assist Hospital in evaluating operational processes of service line and identify opportunities for improvement in cost and quality, compliance with state and federal rules and regulations, monitoring physician compliance with established service line protocols, quality reviews, credentialing criteria, developing protocols to reduce adverse events.
Consulting Fee:	\$150,000 per year
Medical Director Services:	Company shall provide a medical director with cardiology experience to hospitals for administrative services.
Medical Director Services Fee:	\$50,000 per year, paid in monthly installments of \$4,166.66.

The agreement provides that the facility operator will retain ultimate control in all of the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Capability and Feasibility

Total project cost of \$11,171,256 will be funded with equity from SMC. The working capital requirement for this service line is estimated at \$1,379,836, based on two months of the first year's expenses, and will be funded with equity from the existing operations of SMC. BFA Attachments A and B show that SMC has sufficient funds to meet the equity and working capital requirement for this project.

The submitted budget projects a net income \$9,739,880 in Year One and \$19,880,421 in Year Three. The budget appears reasonable. The (\$2,164,290) incremental loss in Year One is due in part to the use of contracted staff for leadership support roles, RN support, and radiology tech support from VitalSolution. Contracted expenses will be eliminated in Year Three of operations as SMC's own staff are expected to work independently after 12 months

BFA Attachment A, 2023 Samaritan Medical Center and Affiliates' Certified Financial Statements, shows the organization had positive working capital, a positive net asset position, and net income of \$11,407,252.

BFA Attachment B, 2024 Samaritan Medical Center's Internal Financial Statements, shows the SMC maintained positive working capital, a positive net asset position, and a net income of \$13,372,883.

Conclusion

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

Attachments

BFA Attachment A	2023 Samaritan Medical Center and Affiliates' Certified Financial Statements
BFA Attachment B	2024 Samaritan Medical Center Internal Financial Statements



Project # 242332-C
OrthoNY Surgical Suites

Program: Diagnostic and Treatment Center
Purpose: Construction

County: Saratoga
Acknowledged: January 21, 2025

Executive Summary

Description

Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites at Saratoga (the Center), a New York limited liability company requests approval to construct a multi-specialty, Article 28 Freestanding Ambulatory Surgery Center (FASC) extension clinic. The FASC will specialize in orthopedic surgery and interventional pain management.

Clifton Park ASC, LLC owns and operates OrthoNY Surgical Suites, an existing Article 28 multi-specialty ambulatory surgery center (ASC) at 16 Maxwell Drive, Clifton Park, New York, 12065 (Saratoga County). Clifton Park ASC, LLC seeks to open this second FASC to accommodate its Saratoga Springs-based medical staff members and an aging patient base. The applicant projects that OrthoNY Surgical Suites' Saratoga-based surgeons will move their cases to the Saratoga Extension ASC, which will be substantially closer to their offices and patients.

The extension clinic will lease the second floor of an approximately 125,000-square-foot building being constructed by Maple Avenue Development Associates, LLC at 612 Maple Avenue, Saratoga Springs (Saratoga County). The facility will include four operating rooms, one procedure room, and requisite support areas.

The 16 physician members are partners in OrthopedicsNY, LLP (OrthoNY), a 46-physician orthopedic surgery and interventional pain practice with seven clinics throughout the Capital Region. The primary service area will

include Saratoga and Warren counties and, secondarily, Clinton and Schenectady counties.

Kevin Kleis, D.O., board-certified in Orthopedics, will be the Center's Medical Director. The applicant is negotiating a transfer agreement for backup and emergency services with Saratoga Hospital, 3.5 miles (6 minutes travel time), and Glens Falls Hospital, 16 miles (19 minutes travel time) from the proposed Center.

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,668 visits in Year One and 3,068 visits in Year Three, with Medicaid at 10.3% and Charity Care at 2%.

Program Summary

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

Financial Summary

The total project costs for renovation and equipment are \$8,455,478. The project costs will be funded with \$2,078,887 in members' equity, a five-year equipment loan for \$2,126,700 at 6.55% interest, and a ten-year loan for \$4,249,891 (variable rate during construction) and fix rate estimated at 6.5% upon conversion to a permanent loan.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,122,483	\$11,989,855
Expenses:	<u>9,162,192</u>	<u>10,368,648</u>
Net Income/(Loss)	\$960,291	\$1,621,207

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **March 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

2. Construction must start on or before **January 1, 2026**, and construction must be completed by **December 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date
June 18, 2025

Need Analysis

Project Description

Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites at Saratoga, a New York limited liability company, requests approval to construct a multi-specialty, Article 28 Freestanding Ambulatory Surgery Center (FASC) extension clinic. The FASC will specialize in orthopedic surgery and interventional pain management. The Center will lease space on the second floor in a to-be-constructed building at 612 Maple Avenue, Saratoga Springs (Saratoga County). The facility will include four (4) operating rooms, one (1) procedure room, and requisite support areas.

Background & Analysis

The relevant service area includes the primary service area of Saratoga and Warren Counties and the secondary service area of Clinton and Schenectady Counties. The total population of the relevant service area is estimated at 541,199 based on 2023 American Community Survey data and is projected to increase to 549,100 by 2030 per projection data from the Cornell Program on Applied Demographics (PAD), an increase of 1.5%. Demographics for the relevant service area are noted below, including a comparison with New York State:

Demographics	Saratoga County	Warren County	Clinton County	Schenectady County	New York State
Total Population – 2023 Estimate	237,075	65,560	78,961	159,603	19,872,319
White (non-Hispanic)	87.8%	91.9%	89.1%	68.7%	53.4%
Hispanic or Lationo (of any race)	3.8%	2.8%	3.4%	8.1%	19.6%
Black or African American (non-Hispanic)	1.6%	1.1%	2.9%	10.1%	13.6%
Asian (non-Hispanic)	2.9%	0.7%	1.4%	4.8%	8.8%
Other (non-Hispanic)	3.9%	3.5%	3.2%	8.3%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

The population aged 65 and over was 19.2% of the total population in 2023. According to the applicant, this cohort is more likely to utilize the ASC's services. By 2030, Cornell PAD, estimates this cohort will be 24.6% of the total population, an increase of 5.4%.

The table below shows health coverage by payor for the relevant service area in 2023:

	Saratoga County	Warren County	Clinton County	Schenectady County
Health Insurance Coverage (%)	97.4%	96.7%	97.1%	96.6%
Employer Plans	57.5%	46.0%	47.7%	50.1%
Medicaid	11.8%	17.0%	18.9%	20.1%
Medicare	14.6%	16.4%	13.4%	12.5%
Non-Group Plans	12.3%	16.1%	16.1%	12.7%
Military or VA	1.2%	1.3%	1.1%	1.3%

Source: Data USA

The table below shows the number of patient visits for relevant ambulatory surgery in the relevant service area for 2021 through 2023:

Ambulatory Surgery within a 25-Mile Radius of Proposed Center				
Facility Name	Type	Patient Visits		
		2021	2022	2023
Saratoga Surgery Center	Hospital Ext Clinic	5,291	4,253	6,193
Saratoga Hospital	Hospital	13,008	13,370	14,087
The New York Eye Surgical Center	ASC	3,789	4,089	4,605
Center for Advanced Ambulatory Surgery (opened 3/2021)	ASC	797	3,156	3,794
Glens Falls Hospital	Hospital	10,221	10,466	10,895
OrthoNY Surgical Suites (Clifton Park location) ¹	ASC	N/A	4,621	4,757
The Northway Surgery and Pain Center	ASC	10,686	9,077	8,779
Total Visits		43,792	49,032	53,110

Source: SPARCS

¹No SPARCS data available for 2021.

All of the facilities listed above provide multi-specialty services, including orthopedics and pain management. In addition, the Department also approved The New York Eye Surgical Center's (CON 222012) request to convert from a single-specialty ASC (ophthalmology) to a multi-specialty ASC (ophthalmology and pain management). The New York Eye Surgical Center is approximately 6.2 miles away and a 9-minute drive from this site.

The applicant projects 2,668 visits in Year One and 3,068 visits in Year Three, with Medicaid at 10.3% and Charity Care at 2%. These projections are based on OrthoNY's current experience operating its other ASCs.

The applicant also estimates that some of the projected case volume will migrate from Saratoga Hospital and Glens Falls Hospital, noting approximately 50% of their total joint cases (485 cases in 2024) to come from Saratoga Hospital to the new ASC. OrthoNY physicians currently provide inpatient orthopedic surgical services and take calls at both hospitals and will continue to following the opening of the Saratoga extension ASC. The applicant states that there is a need for additional surgical capacity that can accommodate complex outpatient orthopedic procedures at a location that is more accessible for OrthoNY's patients residing in the relevant service area, thereby reducing wait times and providing additional access.

The table below shows the projected payor source utilization for Years One and Year Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	1,147	43.0%	1,319	43.0%
Medicare FFS	347	13.0%	399	13.0%
Medicare MC	765	28.7%	880	28.7%
Medicaid FFS	9	0.3%	10	0.3%
Medicaid MC	267	10.0%	307	10.0%
Private Pay	8	0.3%	9	0.3%
Workers Comp	53	2.0%	61	2.0%
Charity Care	53	2.0%	61	2.0%
Tricare/VA	19	0.7%	22	0.7%

Source: Applicant

OrthoNY Saratoga-based physicians historically receive a substantial number of referrals from Federally Qualified Health Centers (FQHC), including Hudson Headwaters Health Network, and is now part of the Hudson Headwaters new PACE network. Based on the location of the proposed ASC, the applicant anticipates increased referrals of Medicaid Managed Care patients and from Hudson Headwaters in particular. The applicant currently participates with traditional FFS Medicaid and with the following Medicaid Managed Care Plans: CDPHP, Fidelis, MVP, Wellcare, UHC, UHC Community Care, and BSNENY.

The Department has received two public comment letters in response to this application:

- Saratoga Hospital - noted that it has adequate capacity to handle additional surgical cases, both at the main hospital and the hospital extension clinic, Saratoga Surgery Center.
 - In response to Saratoga Hospital's public comment, the applicant noted that although some total joint cases may migrate from the hospital to the new ASC, the primary source of case volume for the new ASC will come from Saratoga-area OrthoNY physicians moving cases from OrthoNY Surgical Suites Clifton Park facility and from OrthoNY ASC – Albany facility. The applicant also stated that the OrthoNY physicians currently provide and will continue providing 50% of orthopedic call coverage at Saratoga Hospital.
- Glens Falls Hospital - noted some lower acuity cases may transition to the new facility; however, expect a substantial need to remain in the hospital-based setting

Conclusion

Approval of this project will provide improved access to surgical services in an outpatient setting for the residents of Saratoga, Clinton, Warren, and Schenectady Counties.

Program Analysis

Project Proposal

Proposed Operator	Clifton Park ASC, LLC
To Be Known As	OrthoNY Surgical Suites at Saratoga
Site Address	612 Maple Ave, Saratoga Springs, New York 12866 (Saratoga County).
Specialties	Ambulatory Surgery - Multi Specialty
Hours of Operation	6:30 am to 5:30 pm
Staffing (1st Year / 3rd Year)	33 FTEs in 1 st year & 35 FTEs in 3 rd year
Medical Director	Kevin Kleis, D.O.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Negotiating a transfer agreement for backup and emergency services with Saratoga Hospital, 3.5 miles (6 minutes travel time), and Glen Falls Hospital, 16 miles (19 minutes travel time) from the proposed Center.

The table below shows the FTEs in Year One and Year Three following completion of this project:

Position	Year One	Year Three
Management and Supervision	3	3
Technician and Specialist	7	7
Registered Nurses	18	20
Aides, Orderlies & Attendants	1	1
Clerical and Other Administrative	3	3
Materials Coordinator	1	1
Totals	33	35

Clifton Park ASC, LLC submitted fifteen (15) commitment letters from orthopedic and pain management physicians committed to providing the projected 2,668 procedures in Year One and 3,068 procedures in Year Three at OrthoNY Surgical Suites at Saratoga.

Integration with Community Resources

The Saratoga Extension ASC will benefit community residents by reducing waiting times and enhancing quality of care through a specialized and highly trained staff and a state-of-the-art freestanding ambulatory surgery center. The applicant's current ASC is accredited by the Accreditation Association for Ambulatory Health care (AAAHC) and anticipates the Saratoga Extension ASC will also be accredited by AAAHC. The medical staff will ensure that procedures performed at the facility conform with generally accepted standards of practice and that privileges granted are within the surgeon's scope of practice and expertise.

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

Sixteen (16) members of Clifton Park ASC, LLC were approved in prior projects by the Department of Health. OrthoNY (OrthopedicsNY, LLP) currently has forty-six (46) physicians practicing orthopedic surgery and interventional pain services in affiliated facilities located in the capital region area.

Affiliated Partners

OrthoNY Ambulatory Surgery Center - Albany, located at 3 Atrium Drive, Suite 150, Albany, New York 12205 (formerly aka - Executive Woods Ambulatory Surgery Center)

Everett Road Surgery Center - Albany (as indirect owners), located at 123 Everett Road, Suite 200, Albany, New York 12205

OrthoNY Surgical Suites located at 16 Maxwell Drive, Clifton Park, New York 12065

OrthoNY - Clifton Park located at 1768 Route 9, Clifton Park, NY 12065

OrthoNY - Delmar located at 250 Delaware Avenue, Suite 200, New York 12054

OrthoNY - Malta located at 2388 Rt 9, Mechanicville, New York 12118

OrthoNY - Saratoga located at 5 Care Lane, Saratoga, New York 12866

OrthoNY - Schenectady located at 500 State Street, Schenectady, New York 12305

OrthoNY - Glens Falls located at 14 Hudson Avenue, Glens Falls, New York 12801

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$8,455,478, broken down as follows:

New Construction	\$4,879,164
Design Contingency	487,916
Construction Contingency	243,958
Architect/Engineering Fees	433,200
Movable Equipment	2,363,000
CON Application Fee	2,000
CON Processing Fee	<u>46,240</u>
Total Project Cost	\$8,455,478

The applicant's financing plan appears as follows:

Cash Equity - Members undistributed funds	\$2,078,887
Bank Loan - equipment (6.55%, 5-year term)	2,126,700
Bank Loan - build-out (variable during construction) fixed at estimated 6.5%, 10-year term)	<u>4,249,891</u>
Total	\$8,455,478

Berkshire Bank has provided a letter of interest.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
FASC Revenues:	<u>Per Visit.</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>
Medicaid – FFS	\$1,457	\$13,113	\$1,554	\$15,535
Medicaid – MC	\$2,511	670,437	\$2,586	794,031
Medicare - FFS	\$3,226	1,119,422	\$3,323	1,326,043
Medicare – MC	\$3,691	2,823,615	\$3,801	3,344,810
Commercial - FFS	\$4,612	5,289,964	\$4,750	6,265,488
Private Pay	\$3,200	25,600	\$3,369	30,323
All Other.	\$2,505	<u>180,332</u>	\$2,574	<u>213,625</u>
Total Revenues:		\$10,122,483		\$11,989,855
Expenses:				
Operating	\$2,806	\$7,486,104	\$2,860	\$8,774,837
Capital	<u>\$628</u>	<u>1,676,088</u>	<u>\$520</u>	<u>1,593,811</u>
Total Expenses:	\$3,434	\$9,162,192	\$3,380	\$10,368,648
Net Income (Loss)		<u>\$960,291</u>		<u>\$1,621,207</u>
Visits		2,668		3,068

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

Payor:	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid - FFS	9	0.34%	10	0.33%
Medicaid - MC	267	10.01%	307	10.01%
Medicare - FFS	347	13.01%	399	13.01%
Medicare - MC	765	28.67%	880	28.68%
Commercial - FFS	1,147	42.98%	1,319	42.98%
Private Pay	8	0.30%	9	0.29%
All Other.	72	2.70%	83	2.71%
Charity	<u>53</u>	<u>1.99%</u>	<u>61</u>	<u>1.99%</u>
Total	2,668	100%	3,068	100%

The following is noted concerning the submitted FASC budget:

- The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates. Commercial and private payors reflect the applicant's current experience operating its OrthoNY Surgical Suites ambulatory surgery center.
- Expense assumptions are based upon the applicant's current experience operating its OrthoNY Surgical Suites ambulatory surgery center.
- Utilization assumptions are supported by letters from fifteen board-certified physicians in their respective fields. The operator is committed to providing charity care and treating the Medicaid population. The payor mix is based on the applicant's current experience operating its OrthoNY Surgical Suites ambulatory surgery center.
- The applicant's current ASC is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). The same organization will accredit the Saratoga Extension ASC.
- Breakeven is approximately 90.5% in Year One.

Lease Rental Agreement

The applicant has submitted a draft Lease Agreement for the proposed site; terms are summarized below:

Premises:	Approx. 21,988 sq. ft. on the 2nd floor at 612 Maple Avenue, Saratoga Springs
Owner/Landlord:	Maple Avenue Development Associates, LLC
Lessee/Tenant::	Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites at Saratoga
Term:	15 years plus (3) 5-year renewal terms
Payment:	\$542,004 (\$24.65 per sq. ft.) with a 2% annual increase
Provisions:	Taxes, insurance, utilities, and maintenance

The applicant has provided an affidavit stating that the lease is a non-arms-length agreement. Letters from two NYS licensed realtors attest to the rental rate being fair market value.

Capability and Feasibility

The total project costs for renovation and equipment are \$8,455,478, funded with \$2,078,887 in members' equity, a five-year equipment loan for \$2,126,700 at 6.55% interest, and a ten-year loan for \$4,249,891 (variable rate during construction) and fix rate estimated at 6.5% upon conversion to a permanent loan. Berkshire Bank has provided a letter of interest.

The working capital requirement is estimated at \$1,728,108 based on two months of third-year expenses. Working capital will be satisfied from the applicant's internally generated funds, including those that otherwise would be available for distribution to its members. BFA Attachment A, Clifton Park ASC, LLC 2023 Certified Financial Statement and October 31, 2024 Internal Financial Statement shows that from 2023 through October 31, 2024, the applicant had positive working capital and net assets. In 2023 they generated a net income of \$4,431,595. The October 31, 2024 Internals Financial Statements show a net income of \$5,932,129.

Clifton Park ASC, LLC projects a net income of \$960,291 and \$1,621,207 in Year One and Year Three of operation. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Clifton Park ASC, LLC 2023 Certified Financial Statements and October 31, 2024 Internal Financial Statements.
BFA Attachment B	Organizational Chart



Project # 251136-C

Specialists' One-Day Surgery Center, LLC

Program: Diagnostic and Treatment Center

County: Onondaga

Purpose: Construction

Acknowledged: March 28, 2025

Executive Summary

Description

Specialists' One-Day Surgery Center, LLC (The Center), an existing Article 28, Single-Specialty Freestanding Ambulatory Surgery Center (FASC), is seeking approval to certify the Glacier Creek Facility for Ambulatory Surgery – Multi-Specialty. The Center currently provides surgical procedures for pain management and will add simple orthopedic procedures, primarily carpal tunnel and other hand cases that require local anesthesia.

Specialists' One-Day Surgery Center, LLC currently operates two Ambulatory Surgery Centers:

- Taft Road Facility, a dual single-specialty ambulatory surgery center (Orthopedics and Pain Management) at 5801 East Taft Road, Syracuse, New York.
- Glacier Creek Facility, a four-procedure room single-specialty ambulatory surgery center (Pain Management) at 6711 Towpath Road, East Syracuse, New York.

This project will free up capacity at the Taft Road Facility for more complex orthopedic procedures.

J. Alan Lemley, MD is the Medical Director. Specialist's One Day Surgery, LLC has a Transfer Agreement with St. Joseph's Hospital Health Center, 8.1 miles and 15 minutes away.

OPCHSM Recommendation
Approval

Need Summary

The applicant projects 4,752 visits in Year One and 4,847 visits in Year Three, with Medicaid at approximately 8.3% and Charity Care at 0.1%.

Program Summary

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

Financial Summary

There are no projects costs associated with this application.

Budget:	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,238,883	\$4,209,859	\$4,276,118
Expenses	<u>2,865,575</u>	<u>\$3,442,387</u>	<u>\$3,935,940</u>
Net Income	\$373,308	\$767,472	\$340,178

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

Council Action Date

June 18, 2025

Need Analysis

Project Description

Specialists' One-Day Surgery Center, LLC (The Center) is seeking approval to convert an existing single-specialty ambulatory surgery center (ASC), Glacier Creek Facility, into a multi-specialty ambulatory surgery center. The extension clinic is at 6711 Towpath Road, Suite 165, East Syracuse, New York 13057 in Onondaga County. Glacier Creek Facility is currently licensed for Ambulatory Surgery – Single Specialty Pain Management and has four existing procedure rooms. St. Joseph's Hospital Health Center is a 25% member of The Center.

The Center is proposing to perform simple orthopedic procedures, such as carpal tunnel and other hand cases, that require local anesthesia at the Glacier Creek Facility. The Center currently operates two Article 28 ASCs: (1) Taft Road Facility, a dual single-specialty (orthopedics and pain management) ASC located at 5801 East Taft Road, Syracuse, New York 13212, and (2) Glacier Creek Facility, a single-specialty ASC extension clinic. This project aims to free up capacity at the Taft Road Facility for more complex procedures.

Background & Analysis

The relevant service area consists of Onondaga County, including areas within Syracuse, Liverpool, Baldwinsville, and Camillus. The population of Onondaga County is estimated at 471,611 based on 2023 American Community Survey data and is projected to decrease to 463,795 by 2030 per projection data from the Cornell Program on Applied Demographics (PAD), a decrease of 1.7%. Demographics for the service area are noted below, including a comparison with New York State:

Demographics	Onondaga County	New York State
Total Population – 2023 Estimate	471,611	19,872,319
White (non-Hispanic)	74.6%	53.4%
Hispanic or Latino (of any race)	5.7%	19.6%
Black or African American (non-Hispanic)	10.2%	13.6%
Asian (non-Hispanic)	4.0%	8.8%
Other (non-Hispanic)	5.5%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

In 2023, 96.7% of the population of Onondaga County had health coverage as follows:

Employer Plans	49.6%
Medicaid	19.9%
Medicare	13.0%
Non-Group Plans	13.0%
Military or VA	1.28%

Source: Data USA

The table below shows the number of patient visits for relevant facilities providing ambulatory surgery services in Onondaga County for 2021 through 2023.

Ambulatory Surgery within a 7-mile Radius of Glacier Creek Facility				
Facility Name	Type	Patient Visits		
		2021	2022	2023
SJHHC Northeast Medical Center	Hospital Extension Clinic	3,815	3,222	4,484
Upstate Orthopedics Ambulatory Surgery Center	ASC	6,237	5,849	6,252
St. Joseph's Hospital Health Center	Hospital	8,463	7,909	11,116
UHCC - Harrison	Hospital Extension Clinic	3,127	2,728	3,331
University Hospital SUNY Health Science Center	Hospital	7,880	8,338	9,746
Crouse Hospital	Hospital	14,551	14,485	15,098
Total Visits		44,073	42,531	50,027

Source: HFIS & SPARCS

All the facilities listed above provide multi-specialty services with the exception of Upstate Orthopedics Ambulatory Surgery Center, which provides single-specialty orthopedic services.

The number of projected visits is 4,752 in Year One and 4,847 visits in Year Three, with Medicaid at 8.3% and Charity Care at 0.1%. All surgeons currently perform their cases at the Taft Road Facility and anticipate moving a small percentage of those cases to the Glacier Creek Facility once the project is approved. As of April 2, 2025, the ASC has submitted SPARCS data through March 2025. According to an internal DOH SPARCS report, Medicaid utilization was 15.7% in 2023 and 13.7% in 2022.

The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	1,147	24.1%	1,170	24.1%
Commercial MC	28	0.6%	28	0.6%
Medicare FFS	1,023	21.5%	1,043	21.5%
Medicare MC	928	19.5%	946	19.5%
Medicaid FFS	7	0.1%	7	0.1%
Medicaid MC	389	8.2%	397	8.2%
Private Pay	12	0.3%	13	0.3%
Charity Care	3	0.1%	3	0.1%
Workers Comp	1,192	25.1%	1,216	25.1%
All Other	23	0.5%	24	0.5%

Source: Applicant

Both the Taft Road Facility and Glacier Creek Facility participate in the following Medicaid Managed Care Plans: Excellus Blue Cross Medicaid, Fidelis Medicaid, MVP Medicaid, and Wellcare Medicaid. The ASC also has a transfer and affiliation agreement with St. Joseph's Hospital Health Center, approximately 5.6 miles away and a 12-minute drive from the ASC.

Conclusion

Approval of this project will help improve capacity at the Taft Road Facility and provide access to an appropriate level of care in an outpatient setting for the residents of Onondaga County.

Program Analysis

Project Proposal

Specialists' One-Day Surgery Center, LLC is requesting approval to change the authorized services at the Glacier Creek Facility from single-specialty pain management to multi-specialty. The Company would like the ability to perform simple orthopedic procedures, primarily carpal tunnel and other hand cases, that require local anesthesia at its Glacier Creek Facility. This will help free up capacity at the Taft Road Facility for more complex orthopedic procedures. St. Joseph's Hospital Health Center is a 25% member of the Company.

J. Alan Lemley, MD is the Medical Director. Dr. Lemley received a Medical Degree from Upstate Medical University in 2003. Dr. Lemley has worked as an Orthopedic Surgeon at Syracuse Orthopedic Specialists from 2009 to present and is licensed through January 31, 2027.

Specialist's One Day Surgery, LLC has a Transfer Agreement with St. Joseph's Hospital Health Center, 8.1 miles away and 15 minutes away.

The Center estimates that approximately 41 orthopedic cases will be performed per month. Specialist's One Day Surgery is accredited by AAAHC through 2/21/27.

Staffing is expected to grow by 3.0 FTEs in Year One of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

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

Conclusion

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

Financial Analysis

Operating Budget

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

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial- FFS	\$1,146.53	\$1,176,344	\$1,278.77	\$1,466,744	\$1,278.70	\$1,496,079
Commercial-MC	\$769.32	\$19,233	\$892.61	\$24,993	\$879.07	\$25,493
Medicare- FFS	\$536.12	\$490,550	\$625.61	\$639,996	\$625.88	\$652,796
Medicare-MC	\$514.75	\$427,246	\$615.99	\$571,642	\$616.36	\$583,075
Medicaid-FFS	\$492.50	\$2,955	\$607.43	\$4,252	\$619.57	\$4,337
Medicaid-MC	\$510.43	\$177,630	\$593.33	\$230,807	\$593.01	\$235,423
Private	\$766.73	\$8,434	\$844.50	\$10,134	\$795.15	\$10,337
Other	<u>\$730.81</u>	<u>\$15,347</u>	<u>\$764.65</u>	<u>\$17,587</u>	<u>\$</u>	<u>\$</u>
Workers Comp	\$863.30	\$921,144	\$1,042.50	\$1,243,704	\$1,043.24	\$1,268,578
Total Revenues		\$3,238,883		\$4,209,859		\$4,276,118
Expenses:						
Operating	\$547.71	\$2,327,200	\$606.63	\$2,881,487	\$696.60	\$3,375,040
Capital	<u>\$126.71</u>	<u>\$538,375</u>	<u>\$118.08</u>	<u>\$560,900</u>	<u>\$115.77</u>	<u>\$560,900</u>
Total Expenses	\$674.41	\$2,865,575	\$724.71	\$3,442,387	\$812.37	\$3,935,940
Net Income		<u>\$373,308</u>		<u>\$767,472</u>		<u>\$340,178</u>
Utilization: (Procedures)		4,249		4,750		4,845
Cost Per Procedure		\$674.41		\$724.71		\$812.37

The following is noted with respect to the submitted budget:

- Revenue, expense, and utilization are based on the applicant's historical experience in providing these services.
- Revenues use historical data and a 2% volume increase for years one and three.
- The expenses are based on the current operations and the assumptions of the increased staffing to perform these services at the Glacier Creek facility.

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

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commercial FFS	1,026	24.15%	1,147	24.15%	1,170	24.15%
Commercial MC	25	.59%	28	.59%	29	.60%
Medicare FFS	915	21.53%	1,023	21.54%	1,043	21.53%
Medicare MC	830	19.53%	928	19.54%	946	19.53%
Medicaid FFS	6	.14%	7	.15%	7	.14%
Medicaid MC	348	8.19%	389	8.19%	397	8.19%
Private Pay	11	.26%	12	.25%	13	.27%
Other	21	.49%	23	.48%	24	.50%
Workers Comp	<u>1,067</u>	<u>25.11%</u>	<u>1,193</u>	<u>25.12%</u>	<u>1,216</u>	<u>25.10%</u>
Total	4,249	100%	4,750	100%	4,845	100%

Capability and Feasibility

There is no project cost associated with this application. BFA Attachment A, 2022-2023 Certified Financial Statements of Specialists' One-Day Surgery Center, LLC, show a positive average working capital position, average positive net asset position, and average net income of \$11,954,593 for the period. BFA Attachment B, 1/1/2024 - 12/31/24 and 1/1/25 - 3/31/25 Internal Financial Statements of Specialists' One-Day Surgery Center, LLC. The 1/1/2024 - 12/31/24 statements show the facility had positive working capital, a negative net asset position, and a net income of \$10,701,502. The 1/1/25 - 3/31/25 statements show a positive working capital position, negative net asset position, and a net income of \$3,165,994.

The budget indicates a net income of \$767,472 in Year One and \$340,178 for the Year Three. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	2022 - 2023 Certified Financial Statements of Specialists' One-Day Surgery Center, LLC
BFA Attachment B	1/1/2024 - 12/31/2024 and 1/1/2025 - 3/31/2025 Internal Financial Statements of Specialists' One-Day Surgery Center, LLC



Project # 242314-C
Van Rensselaer Manor

Program: Residential Health Care Facility
Purpose: Construction

County: Rensselaer
Acknowledged: January 10, 2025

Executive Summary

Description

Van Rensselaer Manor (VRM) a 362-bed, Public, Article 28 Residential Health Care Facility (RHCF) at 85 Bloomingrove Drive, Troy, New York (Rensselaer County) requests approval to complete refurbishments, cosmetic updates, and energy/infrastructure improvements to its existing facility to modernize it to better serve its residents.

The facility was constructed in 1996 and has had no major renovations since that time. In addition to the energy and infrastructure improvements, the proposed project includes refreshing approximately 200,000 square feet of the building to provide a more controlled entrance lobby and cosmetic updates to key spaces in the building to modernize methods to serve the residents of the VRM better.

The project was planned and developed in consultation with Siemens Building Technologies and will be completed in phases. The existing number of beds will not change and services to residents will not be disrupted, as an unoccupied wing of beds will be available for temporary transfer during the refurbishment.

OALTC Recommendation
Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

The total project cost of \$121,255,888 will be funded by Rensselaer County General Obligation Bonds, which will be purchased directly by Siemens Public, Inc. at an interest rate of approximately 5%, with maturity between 18 and 25 years. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$57,526,990	\$55,919,812
Expenses	<u>55,301,008</u>	<u>56,822,720</u>
Gain	\$2,225,982	(\$902,908)

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **December 30, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 30, 2025**, and construction must be completed by **September 30, 2027**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AEL]
4. Reimbursable TPC shall be limited to \$74,205,548. This amount is based upon the allowance of 85% of the current RHCF bed cap for Rensselaer County. [CCC]
5. The operator shall submit a plan to maintain resident services and safety during construction to the Central Regional Office and must receive approval for such a plan prior to the commencement of construction. [LTC]
6. The applicant understands and recognizes that any approval of this application is not to be construed as an approval of, nor does it provide assurances of, reimbursement for any costs identified in the application. Reimbursement for all costs shall be in accordance with and subject to the provisions of Part 86 of Title 10. [BFA]

Council Action Date

June 18, 2025

Need Analysis

Background and Analysis

The primary service area is Rensselaer County, which has a population projected to increase to 161,946 by 2030 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

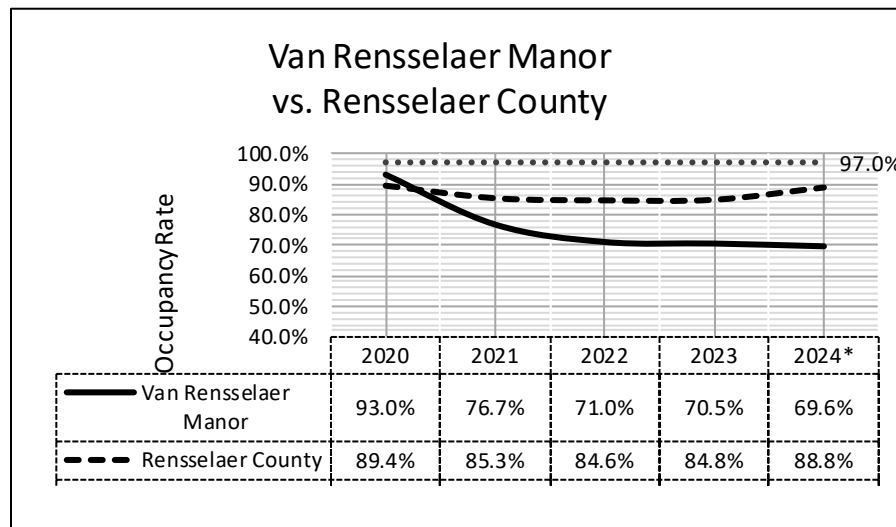
Demographics	Rensselaer County	New York State
Total Population (2023 Estimate)	160,341	19,872,319
Hispanic or Latino (of any race)	5.9%	19.6%
White (non-Hispanic)	79.8%	53.4%
Black or African American (non-Hispanic)	6.3%	13.6%
Asian (non-Hispanic)	3.1%	8.8%
Other (non-Hispanic)	4.9%	4.6%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

The table below provides population estimates of individuals 65 years old and above in Rensselaer County and New York State.

	Rensselaer County Age Group 65-84	Rensselaer County Age Group 85+	New York State Age Group 65-84	New York State Age Group 85+
Estimated 2023 Population	25,483	3,167	3,019,337	441,849
Population Projection by 2030	31,712	4,789	3,723,556	618,653
Percent Change	+24.4%	+51.2%	+23.3%	+40.0%

Source: 2023 American Community Survey (5-Year Estimates) and Cornell Program on Applied Demographics



Source: *2024 data is self-reported and not verified. Occupancy through 2023 is from the RHCF cost reports.

The table below shows the CMS Rating and the utilization of the closest RHCs to Van Rensselaer Manor.

Facility Name	CMS Overall Rating	Beds	Distance from other RHCs	Occupancy			
	As of 3/2025			2021	2022	2023	2024*
Van Rensselaer Manor	2	362	0 mins/0 miles	76.7%	71.0%	70.5%	69.6%
Troy Center for Rehabilitation and Nursing	1	78	8 mins/2.0 miles	97.1%	96.1%	95.3%	96.5%
Rosewood Rehabilitation and Nursing Center	2	80	11 mins/4.0 miles	86.4%	93.3%	90.9%	88.3%
Eddy Heritage House Nursing and Rehabilitation Ctr	1	120	15 mins/5.4 miles	76.8%	83.8%	81.0%	87.5%
Eddy Memorial Geriatric Center	1	80	16 mins/5.4 miles	91.1%	93.3%	95.5%	96.7%
Evergreen Commons Rehabilitation and Nursing Ctr	2	240	15 mins/5.9 miles	96.7%	96.7%	97.2%	97.5%
Hudson Park Rehabilitation and Nursing Center (Albany County)	1	200	14 mins/6.1 miles	78.0%	80.5%	85.0%	90.9%

Source: CMS and RHC cost report

*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHC's cost reports.

Based on weekly census data, the facility reported 77.4% of its 362 licensed beds staffed and 74.6% occupied as of April 15, 2025, for a 96.4% occupancy of staffed beds. Rensselaer County had 95.1% of the county's 1,242 licensed beds staffed and 90.0% occupied for a 94.8% occupancy of staffed beds.

The applicant states that as a result of this project, the facility will attract more residents and staff, citing that a new and refreshed facility will enable it to better market and present the RHC to potential new residents, as well as, other admission sources (e.g., hospitals). Further, they anticipate that being able to provide families with a tour of an updated facility will further enhance the facility's ability to attract residents and increase its occupancy over time.

Conclusion

There will be no change in beds in Rensselaer County. The applicant reports that the renovations will modernize Van Rensselaer Manor and enhance the quality of life for its residents, improve the working conditions for staff, and ensure the facility remains operable for residents of Rensselaer County.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Van Rensselaer Manor	Same
Address	85 Bloomingrove Drive Troy, NY 12180	Same
RHCF Capacity	362 beds	Same
ADHCP Capacity	N/A	Same
Type of Operator	Municipal (County)	Same
Class of Operator	Public	Same
Operator	Rensselaer County	Same

Project Review

Van Rensselaer Manor is a 362-bed residential healthcare facility in Rensselaer County. This project proposes renovation work, cosmetic updates throughout the facility, and improvements to the existing facility's energy/infrastructure. The project will consist of six phases, starting on the residential wings and finishing in the lobby, basement, and first-floor ancillary wing. There will be no changes made to the number of residential healthcare facility beds or services provided at the facility as part of this project.

Physical Environment

Van Rensselaer Manor is a three-story skilled nursing facility with a basement for support functions and equipment. The layout of the building is separated into three wings with a centralized elevator lobby that connects the facility. On the first floor, there is an additional ancillary wing, in which the centralized kitchen and administrative office space are located. The facility has a total of 362 beds, consisting of 163 double-bedded rooms and 36 single-bedded rooms. On each wing, there are 18 double rooms and 4 single rooms, except for the first floor Wing C, which has an additional double-bedded room.

The basement of the facility will be renovated to expand the existing men's locker room. The renovations will consist of repurposing a section of the adjacent women's locker room to provide additional space for lockers, and a second bathroom will be added. In addition, the computer training room will also be expanded by removing the existing entryway and office.

The first-floor vestibule and lobby will undergo a renovation to update the overall layout. The vestibule will feature a new security desk and seating area. The gift shop will be relocated to the elevator lobby to free up space in the main lobby. The new lobby will feature a new reception area with a welcome desk, a closet for storage, a drinking fountain, and two ADA-accessible bathrooms. The first-floor therapy space will be renovated to make the existing bathroom ADA accessible, and a section of the therapy room will be repurposed to accommodate a new in-service training room for staff. An additional privacy curtain will be added to the therapy room to help ensure privacy. The administrative offices on the first-floor ancillary wing will be renovated to accommodate the current number of employees and to optimize space and efficiency. Three administrative offices will be reduced in size to accommodate a new copy room. Another administrative office will become the new medical director's office. The former medical director's office will be converted into a dietary office, and the existing door will be relocated to provide access to the central kitchen. Two Director of Nursing offices will be converted into one larger open space with four cubicles. The central kitchen will be renovated to make room for a new walk-in cooler. The renovations will consist of removing the dietary office to accommodate the new walk-in cooler.

Residential wings on the first, second, and third floors will undergo the following renovations. The existing nursing stations on each wing will be renovated to accommodate updated technology. The existing medication room and chart room, located behind the nurses' stations, will be expanded by relocating the adjacent nourishment room and oxygen storage room. A new nourishment station will be constructed in each of the resident dining rooms on each wing. The existing oxygen storage room will be relocated adjacent to each of the soiled utility rooms on each wing. Additional storage is being added adjacent to each clean utility room, and the existing activity storage space in each resident dining room will be

expanded. The existing personal laundry rooms on the first-floor residential wings will be converted into janitor closets, and laundry services will be provided in the centralized laundry room located in the basement. The existing personal laundry on the second and third-floor resident wings will be relocated, and the existing laundry space will be converted into janitor closets. The new personal laundry on the second and third-floor resident wings will repurpose an existing bathroom adjacent to the consulting office. The new layout of the personal laundry space will feature the washer and dryer side by side and a counter for folding clothing. All resident rooms will be renovated, removing and replacing the existing accordion doors to access the resident bathrooms with a sliding door to improve ease of access.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Van Rensselaer Manor	Current	**	**	**	***
	02/1968*	**	**	**	***

Data date: 04/2025

*Data as of 01/2009

Compliance

Based on the most recent surveillance information, this facility is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules, and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the results of routine Article 28 surveys, as well as, investigations of reported incidents and complaints.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total renovation and movable equipment cost is projected at \$121,255,888, broken down as follows:

Renovation and Demolition	\$77,330,801
Design Contingency	7,733,080
Construction Contingency	7,733,080
Architect / Engineer Fees	5,600,000
Construction Managers Fees	7,890,385
Other Fees (Consultant)	2,241,465
Movable Equipment	6,917,040
Interim Interest Expense	5,144,789
CON Application Fee	2,000
CON Processing Fee	<u>663,248</u>
Total Project Cost	\$121,255,888

The Bureau of Construction Cost Control has determined that the cost per bed exceeds the applicable RHCf bed cap limitation for construction. The allowable project cost for reimbursement will be limited to \$74,205,548.

Full RHCf Bed Cap	\$239,000 Per Bed
362 Beds X \$239,000	\$86,518,000
Reduce by 15%	12,977,700
CON Application Fee	2,000
CON Processing Fee	<u>663,248</u>
Total Reimbursable Project Cost	\$74,205,548

The applicant will finance the total project's costs of \$121,255,888 with Rensselaer County General Obligation Bonds at 5% interest and a maturity between 18 and 25 years. They will purchase directly from Siemens Public, LLC, which has provided a letter of interest.

Operating Budget

As summarized below, the applicant has submitted their Current Year (2023) operations and operating budget, in 2025 dollars, for Years One and Three.

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
<u>Revenues</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$247.53	\$19,982,324	\$326.02	\$28,950,554	\$314.35	\$30,705,417
Medicare FFS	\$751.70	1,312,466	\$751.54	1,443,713	\$751.58	1,588,084
Medicare MC	\$468.53	891,613	\$468.60	980,774	\$468.46	1,078,852
Private Pay	\$505.43	4,464,483	\$505.45	4,910,931	\$505.43	5,402,024
Other Oper. Rev.*		1,511,133		1,511,133		1,511,133
Non-Oper. Rev**		<u>15,634,302</u>		<u>19,729,885</u>		<u>15,634,302</u>
Total		\$43,796,321		\$57,526,990		\$55,919,812
<u>Expenses</u>						
Operating	\$464.85	\$43,327,831	\$428.02	\$43,884,113	\$405.84	\$45,772,000
Capital	<u>\$12.38</u>	<u>1,154,242</u>	<u>\$111.35</u>	<u>11,416,895</u>	<u>\$97.98</u>	<u>11,050,720</u>
Total	\$477.23	\$44,482,073	\$539.37	\$55,301,008	\$503.82	\$56,822,720
Net Income		<u>(\$685,752)</u>		<u>\$2,225,982</u>		<u>(\$902,908)</u>
Patient days		93,208		102,529		112,782
Occupancy		70.54%		77.60%		85.35%

*Other Operating Revenue: Gift Shop \$11,455, Rebates \$18,938, Vending Machines \$669, Medical Record fees \$30, Barber & Beauty Shops \$14,364, Investment Income \$1,411,345, Nurse Aide Training \$8,490, and Miscellaneous \$45,842.

**Non-operating Income: Intergovernmental Transfer (IGT) \$12,593,882, Contributions from County \$762,080, and Federal Grants \$2,278,340. IGT is expected to increase by \$4,095,583 in the First Year.

The following is noted concerning the operating budget:

- The Current Year reflects the facility's 2023 revenues and expenses.
- The Medicaid Fee for Service rate is based on the facility's 2024 Medicaid Regional Pricing rate sheets, plus a new capital rate including 100% of the project's depreciation expense and 85% of the interest expense (75% standard allowance, plus 5% distressed facility allowance, and 5% green project allowance).
- Medicare and Private Pay rates are based on the 2023 rates.
- Expenses are based on 2023 operating expenses adjusted for increased occupancy, interest, and depreciation. Based on an analysis by Siemens Building Technologies, there are savings through enhanced energy efficiency.
 - The projected percentage of direct care staffing costs to projected facility revenues is 47.61% in Year One and 51.75% in Year Three, exceeding the 40% requirement in Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 59.42% in Year One and 64.61% in Year Three, which is under the 70% requirement in Public Health Law §2808.
 - This project will result in significant depreciation and interest expenses. However, while these expenses are not considered Direct Resident Care expenses, they are still costs that must be incurred by VRM despite their positive impact on residents' quality of life.
- Occupancy projections were based on VRM's 2023 occupancy of 70.54% as of December 04, 2024.
- The facility's annual average occupancy rates for 2020, 2021, 2022, and 2023 were 93.0%, 76.7%, 71.0%, and 70.54%, respectively.
- VRM reported 77.4% of its 362 licensed beds were staffed and 74.6% occupied as of April 15, 2025. This calculates to a 96.4% occupancy of staffed beds.
- The applicant expects to increase occupancy over time as a result of the improvements made by this project.
- The facility's Medicaid admissions of 64.7% in 2022 and 52.8% in 2023 were above Rensselaer County's 75% threshold rate of 33.4% for 2022 and 34.3% for 2023.
- The breakeven utilization is projected at 96.13% in Year One.

Utilization by payor source is projected as follows:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	80,726	86.61%	88,799	86.61%	97,678	86.61%
Medicare FFS	1,746	1.87%	1,921	1.87%	2,113	1.87%
Medicare MC	1,903	2.04%	2,093	2.04%	2,303	2.04%
Private Pay	<u>8,833</u>	<u>9.48%</u>	<u>9,716</u>	<u>9.48%</u>	<u>10,688</u>	<u>9.48%</u>
Total by Payor	93,208	100%	102,529	100%	112,782	100%

Capability and Feasibility

The applicant will finance the total project cost of \$121,255,888 using Rensselaer County General Obligation Bonds, which will be purchased directly by Siemens Public, Inc. at an interest rate of approximately 5%, with maturity between 18 and 25 years. Siemens Financial Services has provided a letter of interest. Due to RHCF Bed cap limitations for construction, the allowable project cost for reimbursement will be limited to \$74,205,548.

The working capital requirement of \$1,803,156, based on two months of Year One expenses, will be funded by ongoing operations. BFA Attachment A, 2023 Van Rensselaer Manor Certified Financial Statement and October 31, 2024, Internal Financial Statements, shows positive working capital, positive net assets, and a net loss of (\$16,320,054) in 2023. As of October 31, 2024, VRM had positive working capital, a positive net asset position, and a net income of \$4,682,975.

The budget indicates a net income of \$2,225,982 in Year One and a net loss of (\$902,908) in Year Three. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	2023 Van Rensselaer Manor Certified Financial Statement and October 31, 2024 Internal Financial Statements
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Project # 251126-C
NYU Langone Hospitals

Program: Hospital
Purpose: Construction

County: Richmond
Acknowledged: March 19, 2025

Executive Summary

Description

NYU Langone Hospitals (NYULH), an existing Article 28, voluntary not-for-profit corporation, is seeking approval to certify a Perlmutter Cancer Center hospital extension clinic at 2801 Richmond Hill Avenue, Staten Island, New York (Richmond County). Upon certification, the extension clinic will provide NCI-designated cancer care in Staten Island including office visits with medical and radiation oncologists, treatments for cancer infusion, radiation oncology, and imaging such as MRI, CT, PET/CT, Mammography, Ultrasound, and X-Ray.

The existing space at 2801 Richmond Avenue will contain a Medical Oncology unit with fourteen (14) exam rooms, two (2) treatment rooms, one (1) ultrasound, a shot room with six (6) positions, and required support space. The infusion area will have twenty-two (22) bays. The Women's Health area has two (2) ultrasounds and two (2) mammography rooms. Within the Radiology and Radiation Oncology area there is an MRI Scanner, CT Scanner, X-ray Scanner, Pet/CT Scanner, Linear Accelerator, (2) Exam Rooms, and all other required support space.

Abhirami Vivekanandarajah, M.D., who is Board Certified in Internal Medicine with Sub-Certifications in Medical Oncology and Hematology, will serve as the Medical Director.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval of this project will improve local access to cancer services for those patients who would otherwise need to travel outside of Richmond County for an equivalent level of care. The applicant projects 14,329 visits in Year One and 29,815 in Year.

Program Summary

A favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

There is no project cost for this project.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$23,287,536	\$42,764,348
Expenses	<u>\$21,587,422</u>	<u>\$38,878,649</u>
Net Income / (Loss)	\$1,700,114	\$3,885,708

Health Equity Impact Assessment

This project does not require a Health Equity Impact Assessment as per stipulations in Section 2802-B of the PHL.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]

Approval conditional upon:

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

Council Action Date

June 18, 2025

Need Analysis

Project Description

NYU Langone Hospitals (NYULH), an existing Article 28, voluntary not-for-profit corporation, is seeking approval to build a new hospital extension clinic at 2801 Richmond Hill Avenue, Staten Island, New York (Richmond County). Upon certification, the extension clinic will provide NCI-designated cancer care in Staten Island. These include office visits with medical and radiation oncologists, treatments for cancer infusion and radiation oncology, and imaging such as MRI, CT, PET/CT, Mammography, Ultrasound, and X-Ray.

Background and Analysis

The primary service area for this project is Richmond County. The population of Richmond County is estimated to decrease to 488,119 by 2030 per projection data from the Cornell Program on Applied Demographics (PAD), a decrease of 0.9%. The demographics for the service area are noted below, including a comparison with New York State:

Demographics	Richmond County	New York State
Total Population – 2023 Estimate	492,734	19,872,319
Hispanic or Latino (of any race)	19.5%	19.6%
White (non-Hispanic)	56.6%	53.4%
Black or African American (non-Hispanic)	9.00%	13.6%
Asian (non-Hispanic)	12.0%	8.8%
Other (non-Hispanic)	2.9%	4.6%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

In 2023, 96.1% population of Richmond County had health coverage as follows.

Employer Plans	53.4%
Medicaid	19.7%
Medicare	12.5%
Non-Group Plans	10.2%
Military or VA	0.375%

Source: Data USA

The applicant projects 14,329 visits in Year One and 29,816 in Year Three. The projected payor mix is shown below,

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	32.0%	32.0%
Medicare	39.0%	39.0%
Medicaid	23.0%	23.0%
Charity Care	3.0%	3.0%
Bad Debt	3.0%	3.0%

Source: Applicant

This project will enable Richmond County residents to obtain needed cancer-related services closer to home instead of traveling to Manhattan or Brooklyn for their care. They expect to sustain and grow their volume by maintaining a high-quality delivery of care, using best-in-class clinical equipment and technologies, offering care by an evolving multispecialty team, and allowing patients to navigate their diagnosis and treatment plans within one location.

This application includes one new LINAC for provision of therapeutic radiology. Below is data from the NYS Cancer Registry that is used to calculate the need for LINAC machines. The table below shows the need for LINAC machines in the New York City Region.

	LINAC Need in NYC Region	Total
1	Number of Cancer Cases per Year	42,112
2	60% will be Candidates for Radiation Therapy	25,268
3	50% of (2) will be Curative Patients	12,634
4	50% of (2) will be Palliative Patients	12,634
5	Course of Treatment for Curative Patients is 35 Treatments	442,176
6	Course of Treatment for Palliative Patients is 15 Treatments	189,504
7	The Total Number of Treatments [(5)+(6)]	631,680
8	Need for LINAC Machines ¹ [(7)/6,500]	98
9	Existing/Approved Resources	81
10	Remaining Need for LINAC Machines [(8)-(9)]	17

¹Each LINAC Machine has capacity for 6,500 Treatments

Conclusion

Approval of this project will improve local access to cancer services for those patients who would otherwise need to travel outside of Richmond County for an equivalent level of care.

Program Analysis

Project Description

NYU Langone Hospitals (NYULH) submits this Certificate of Need application to certify and implement a Perlmutter Cancer Center hospital extension clinic at 2801 Richmond Avenue, Staten Island, NY 10314

The following tables shows the projected FTEs in Year One and Year Three following completion of this project:

Staffing	Year One	Year Three
Management and Supervision	6.0	7.0
Technician and Specialist	21.0	32.0
Registered Nurses	6.0	10.0
Physician	4.0	5.0
Nurse Practitioners	5.0	10.0
Clerical and Other Administrative	6.0	7.0
Medical Assistants	7.0	9.0
Total	55.0	80.0

Abhirami Vivekanandarajah, MD will be the medical director of the facility. Dr. Vivekanandarajah graduated with a medical degree from Saba University in 2006 and is Board Certified in Internal Medicine with Sub-certifications in Medical Oncology and Hematology.

Compliance with Applicable Codes, Rules and Regulations

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

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

Prevention Agenda

NYU Langone Hospitals (NYULH), in New York County, is requesting approval for the certification and implementation of a Perlmutter Cancer Center extension clinic in Richmond County. The project aims to provide high-quality, patient-centered cancer care and services that are currently available in Brooklyn and Manhattan and extend them to their patient population residing in Staten Island, NY.

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

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

The proposed project will advance the Prevention Agenda priorities of Preventing Chronic Diseases, Promoting Healthy Women, Infants and Children, and Promoting a Healthy and Safe Environment by allowing NYULH to provide comprehensive cancer care to their patient population in Richmond County, offering smoking cessation services and educational programs to address tobacco use and cancer prevention.

As per the latest available report, NYULH spent \$36,293,694 on community health improvement services in 2022, representing 0.48 % of total operating expenses.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for Year One and Year Three, summarized below:

<u>Outpatient Rev.</u>	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
Commercial FFS	\$3,936.28	\$18,047,841	\$3,473.68	\$33,142,370
Medicare FFS	\$632.08	\$3,260,255	\$557.76	\$5,987,009
Medicare MC	\$541.57	\$232,875	\$478.35	\$427,643
Medicaid MC	\$529.90	\$1,746,565	\$467.68	\$3,207,326
Total Operating Rev.		\$23,287,536		\$42,764,348

Expenses:

Operating	\$1,434.67	\$20,557,422	\$1268.44	\$37,818,640
Capital	<u>71.88</u>	\$1,030,000	<u>35.55</u>	\$1,060,000
Total Operating Exp.	\$1,506.55	\$21,587,422	\$1,304.00	\$38,878,640

Net Income / (Loss)	<u>\$1,700.114</u>	<u>\$3,885.708</u>
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Total Visits	14,329	29,815
Cost Per Visit	\$1,506.55	\$1,304.00

The following is noted with respect to the submitted budget:

- Revenue rates by payor source are based on current reimbursement rates received.
- Expenses are based on medical and surgical supplies needed, and staffing costs from related to the 55 FTEs in Year One and 80 FTEs in Year Three.
- Visits are based on NYU's current experience with growth added in for the new service area.

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

<u>Utilization:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	32.00%	32.00%
Medicare FFS	36.00%	36.00%
Medicare MC	3.00%	3.00%
Medicaid MC	23.00%	23.00%
Charity Care	3.00%	3.00%
Bad Debt.	<u>3.00%</u>	<u>3.00%</u>
Total	100.00%	100.00%

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

Administrative Service Agreement

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

Operator:	NYU Langone Hospitals
Consultant:	ONEHEALTH NY LLC
Term:	TBD
Services:	ONEHEALTH shall provide administrative support and support services, with respect to the Cancer Center to include Management and financial consultations; Accounting; Coding and billing services; Human Resources; Practice planning; Physician Licensure and Credentials and Clinical Trials.
Fees:	\$1,950,000 annually or \$162,500 monthly.

The operator does not delegate to the consultant any responsibilities nor give any independent authority over the reserved responsibilities in the agreement. The operator has sole discretion to all operations and independent control over all records' policies and procedures. All rights to approve or disapprove remain with the operator solely. ONEHEALTH NY LLC is affiliated with North Shore Hematology-Oncology, P.C. d/b/a New York Cancer & Blood Specialists.

Capability and Feasibility

There is no project cost related to this application. The working capital requirements are estimated at \$6,483,107, based on two months of third-year expenses, and will be funded through equity from NYULH. The submitted budget projects a net income of \$1,700,114 and \$3,885,708 during Year One and Year Three of operations, respectively.

BFA Attachment A, 2023-2024 Certified Financial Statements of NYU Langone Hospitals, shows average positive working capital, an average positive net asset positions and a net income of \$358,789,000 and \$431,436 in 2023 and 2025, respectively. BFA Attachment B, The September 1, 2024, thru January 31, 2025, show the entity had a positive working capital position, a positive net asset position, and net income of \$790,134,000 for the period shown.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2023-2024 Certified Financial Statements – NYU Langone Hospitals
BFA Attachment B	Financial Summary- September 1, 2024 - January 31, 2025, Internal Financial Statements of NYU Langone Hospital



Project # 251001-C
Mount Sinai South Nassau

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: January 15, 2025

Executive Summary

Description

Mount Sinai South Nassau (MSSN), a 455-bed, acute care hospital at One Healthy Way, Oceanside (Nassau County), and member of Mount Sinai Health System, requests approval to certify an adult cardiac surgery program and convert two (2) existing operating rooms to be used for cardiac surgery cases. There is no construction or renovations associated with this application. The Operating Rooms (OR) that will be used for cardiac surgery cases at MSSN are under construction per approved CON No. 181051-C. They are suitable for cardiac surgery and will be available upon final approval of this application. The equipment needed to outfit each OR that will perform cardiac surgery cases is included in this application.

This project will be undertaken by MSSN in cooperation with, and with direct clinical and quality oversight from, the Mount Sinai Health System and The Mount Sinai Hospital (MSH).

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 196 cardiac surgery procedures in Year One and 319 procedures in Year Three. Implementing this adult cardiac surgery program will enable MSSN to provide advanced cardiac services to patients closer to where they live.

Program Summary

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

Financial Summary

The total project cost for the movable equipment is \$1,281,354 and will be met with equity from the operation of MSSN.

<u>Budget:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$785,963,169	\$808,825,282	\$822,938,530
Expenses	<u>748,545,861</u>	<u>768,096,566</u>	<u>775,793,097</u>
Net Income	\$37,417,308	\$40,728,716	\$ 47,145,433

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of assurances that cardiac services will be provided regardless of a patient's ability to pay or source of payment and a commitment to serve underserved populations. As part of this commitment, the facility must provide a plan outlining how the provision of cardiac services to the under and uninsured will be enhanced and monitored. Tracking of payer source information must be submitted to the Department upon request. Baseline data identifying payer source mix for patients undergoing cardiac catheterization should be submitted with the plan. [HSP]
3. Submission of a written agreement that the cardiac surgery center must document a cardiac patient base and current cardiac interventional referrals sufficient to support a projected annual volume of at least 300 cardiac surgery cases and a projected annual volume of at least 36 emergency PCI cases within two years of approval. The criteria for evaluating the need for additional adult cardiac surgery centers within the planning area shall include consideration of appropriate access and utilization, and the ability of existing services within the planning area to provide such services. [HSP]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Mount Sinai South Nassau (MSSN) is a 455-bed acute care hospital and member of the Mount Sinai Health System (Mount Sinai). MSSN is located at One Healthy Way, Oceanside (Nassau County), New York 11572, and is seeking approval to certify an adult cardiac surgery program. This project will be undertaken by MSSN in cooperation with, and with the direct clinical and quality involvement and oversight of, the Mount Sinai Health System and The Mount Sinai Hospital (MSH). There is no construction or renovation associated with this application. The Operating Rooms (OR) that will be used for cardiac surgery cases at MSSN are under construction in approved Project 181051, are suitable for cardiac surgery, and will be available upon final approval of this application.

Background and Analysis

The primary service area is Nassau County and the surrounding area. The population of Nassau County is projected to increase to 1,432,859 by 2030, based on the Cornell Program on Applied Demographics estimates. Nassau County's aged 65+ population was 285,758 in 2023 and is expected to increase to 333,668 by 2030. Demographics of the primary service area are noted below, including a comparison with New York State.

Demographics	Nassau County	New York State
Total Population	1,388,138	19,872,319
Hispanic or Latino (of any race)	18.5%	19.6%
White (non-Hispanic)	55.4%	53.4%
Black or African American (non-Hispanic)	10.9%	13.6%
Asian (non-Hispanic)	11.5%	8.8%
Other (non-Hispanic)	3.7%	4.6%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

In 2023, 96.1% of the population in Nassau County had health coverage as follows.

Employer Plans	58.0%
Medicaid	11.4%
Medicare	13.3%
Non-Group Plans	13.2%
Military or VA	0.213%

Source: Data USA

Below is the applicant's projected payor mix showing inpatient discharges and outpatient visits.

Applicant Payor Mix						
Payor	Current	Year One	Year Three	Current	Year One	Year Three
	Inpatient Discharges			Outpatient Visits		
Commercial	15.77%	15.85%	15.89%	31.91%	31.91%	31.91%
Medicare	45.87%	46.04%	46.15%	39.99%	39.99%	39.99%
Medicaid	24.76%	24.63%	24.54%	21.15%	21.15%	21.15%
Private Pay	0.38%	0.39%	0.39%	0.00%	0.00%	0.00%
Charity Care	0.10%	0.11%	0.11%	0.81%	0.81%	0.81%
Other (Workers' Comp, No Fault, Employee Plans)	13.12%	12.99%	12.92%	6.15%	6.15%	6.15%
Total	20,490	20,686	20,809	276,354	276,354	276,354

The table below provides the total number of cardiac surgeries performed within New York State from 2019 through 2023.

Statewide - Cardiac Surgery Procedures					
Year	2019	2020	2021	2022	2023
Cardiac Surgery Procedures	17,986	13,572	15,349	15,432	17,275

Source: Cardiac Services Group, excludes Trans Catheter Aortic Valve Replacement (TAVR)

The table below shows statewide data for cardiac surgery cases performed in hospitals within the Nassau County area for 2019 through 2023.

Nassau Area Hospitals – Cardiac Surgery Procedures					
Hospital	2019	2020	2021	2022	2023
NYU Langone-Long Island	430	265	282	332	395
North Shore Univ Hosp	1011	726	952	844	932
St. Francis Hospital	927	697	757	792	868
Total	2,368	1,688	1,991	1,968	2,195

Source: Cardiac Services Group, excludes TAVR

The table below provides the number of Nassau County residents who received cardiac surgery within and outside of the county. The majority of residents are treated within the county.

Nassau County Residents – Cardiac Surgery Procedures					
Facility	2019	2020	2021	2022	2023
NYU Langone Hospital – Long Island	240	160	258	179	193
North Shore University Hospital	347	245	494	288	323
St. Francis Hospital & Heart Center	466	346	661	388	379
Treated in Nassau County	1,053	751	1,413	855	895
St. Peters Hospital	0	0	0	0	1
UHS Wilson Med Ctr	0	0	0	1	0
Buffalo General Med Ctr	0	0	1	0	0
Univ. Hosp-Stony Brook	5	4	5	8	7
St. Joseph's Hospital	0	0	1	0	0
Good Sam - Suffern	0	0	0	1	0
South Shore Univ. Hosp	20	16	33	25	19
Good Sam Univ Hosp	32	30	38	27	42
Westchester Med Ctr	2	0	4	1	2
Montefiore - Moses	7	0	1	1	0
Maimonides Medical Ctr	2	2	0	0	3
Univ Hosp at Downstate	1	0	0	0	0
Bellevue Hospital Ctr	1	3	2	0	1
Lenox Hill Hospital	22	12	20	8	21
Mount Sinai Hospital	103	96	150	106	114
NYP NY Weill Cornell	31	35	39	30	46
NYU Langone Health	62	50	104	68	65
NYP Columbia Presby.	50	13	25	17	22
Mount Sinai Morningside	4	9	7	6	15
Long Island Jewish MC	1	2	3	3	2
NYP Queens	5	0	4	2	10
Montefiore - Weiler	2	0	0	0	0
Treated Outside of Nassau County	350	272	437	304	370
Total	1,403	1,023	1,850	1,159	1,265

Source: Cardiac Services Group, excludes TAVR

The applicant projects 196 cardiac surgery procedures in Year One and 319 procedures in Year Three, thus exceeding the annual minimum of 100 procedures required by 10 NYCRR Section 405.29 – Cardiac Services and 300 procedures by the second year of operation required by 10 NYCRR Section 709.14.

The applicant has a well-known PCI and Diagnostic Catheterization program, and by adding cardiac surgery, patients can remain close and ensure the continuity of care. This will reduce travel for patients who are currently traveling to the NYC area.

Neighboring Cardiac Surgery Centers: Distance from Mount Sinai Hospital		
Hospital	Distance (miles)	Travel Time (minutes)
NYU Langone-Long Island	6.9 miles	26 min
North Shore Univ Hosp	19 miles	32 min
St. Francis Hospital	17.9 miles	33 min

Source: Google Maps 2024 (Travel times displayed assume average travel conditions)

According to the applicant, Mount Sinai has been performing the cardiac procedures as noted in the table below.

Mount Sinai Nassau Current and Projected Adult Cardiac Procedures			
	2023	Year 1	Year 3
Diagnostic Catheterization	1,592	1,592	1,592
Electrophysiology Procedures	294	294	294
Total	1,886	1,886	1,886

Source: Applicant

Mount Sinai Nassau has stated the following reasons for this project:

- Meet the demand of the growing and aging population and the high volume of cardiac surgery patients.
- Enhance accessibility- currently, many residents requiring cardiac surgery on either an emergency or scheduled basis travel outside Long Island for care.
- Collaborate with community agencies to improve access in underserved communities.
- Provide high-quality cardiac procedures to residents (through collaboration with Mount Sinai).
- Address the increasingly complex cases presented at MSSN from the emergency department and STEMI/PCI program.

Mount Sinai Nassau will also be offering education programs for patients that address heart disease and control or prevention, making correct healthy food choices, and providing wellness and fitness classes to staff. They will also be working with community leaders to improve heart-related care and prevention of heart disease.

Conclusion

The addition of Cardiac Services at Mount Sinai Nassau will provide additional options for residents to receive cardiac surgeries in the Nassau area.

Program Analysis

Project Proposal

Mount Sinai South Nassau (MSSN) is a 455-bed acute care hospital and member of the Mount Sinai Health System (Mount Sinai). MSSN is located at One Healthy Way, Oceanside (Nassau County), New York 11572 and is submitting this Certificate of Need Application to certify an adult cardiac surgery program. This project will be undertaken by MSSN in cooperation with, and with the direct clinical and quality involvement and oversight of, the Mount Sinai Health System and The Mount Sinai Hospital (MSH). There is no construction or renovation associated with this Application. The Operating Rooms (OR), that will be used for cardiac surgery cases at MSSN, are under construction per approved Project No. 181051-C. They are suitable for cardiac surgery and will be available upon final approval of this application. The equipment needed to outfit each OR that will perform cardiac surgery cases is included in this application.

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

Staffing	Year One	Year Three
Management & Supervision	344.0	344.0
Technician & Specialist	427.6	427.6
Registered Nurses	839.2	849.2
Licensed Practical Nurses	44.0	44.0
Aides, Orderlies & Attendants	324.4	324.4
Physicians	202.5	202.5
PGY Physicians	96.2	96.2
Physicians' Assistants	61.6	61.6
Nurse Practitioners	47.7	47.7
Social Workers and Psychologist	49.9	50.0
Physical Therapists and PT Assistants	27.2	27.5
Occupational Therapists and OT Assistants	5.9	5.9
Other Therapists and Assistants	0.5	1.0
Speech Therapists and Speech Assistants	2.3	2.3
Infection Control, Environment and Food Service	201.5	201.7
Clerical & Other Administrative	502.5	502.5
Facility/Security Personnel	33.4	34.1
Other	236.2	236.2
Total Staff	3446.6	3458.4

Dr. Robin Varghese will be the Medical Director of the cardiac surgery program at MSSN and is currently an Associate Professor of Surgery and the System Director in the Department of Cardiovascular Surgery at the Icahn School of Medicine at The Mount Sinai Hospital. Dr. Varghese has been in these roles since 2015. Dr. Varghese is responsible for Intensive Care physician manpower at all cardiac surgical sites in the Health System and is responsible for Physician Assistant hiring at Mount Sinai Hospital Cardiothoracic ICU (CTICU) and for quality outcomes in the CTICU. Dr. Varghese completed a Doctor of Medicine Program at the University of Western Ontario in 2002, moving on to complete a Critical Care Fellowship Program at the University in 2009, and completed an Advanced Cardiac Surgery Fellowship at Mount Sinai School of Medicine in 2010.

The Applicant has submitted a written plan that demonstrates their ability to comply with all the standards for Adult Cardiac Surgery Services, and they have assured the Department that their program will meet all the requirements. They have included a Cardiac Surgery Training Plan for registered nurses involved in the care of cardiac surgery patients, a Data Management Agreement to meet the reporting requirements of a cardiac surgery program, a Community Service Plan and Community Education Team, proposed discharge material for the cardiac patients, a Policy and Procedure for Admission/Discharge Criteria in the

Cardiac Intensive Care Unit, Cardiac Step Down Unit, and Cardiac Surgery Intensive Care Unit, a Policy and Procedure of Criteria for Admission/Transfer/Discharge on telemetry units, as well as several other policy and procedures regarding monitoring and treatment of the cardiac patient.

Compliance with Applicable Codes, Rules, and Regulations

Based on the most recent surveillance information, this facility is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules, and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

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

- The Department issued a Stipulation and Order dated 05/05/2017, and fined Mount Sinai \$2,000 based on deficiencies found during a survey completed on 01/25/2016. Deficient practices were found in the area of Patient Rights.
- The Department issued a Stipulation and Order dated 10/04/2022, and fined Mount Sinai West \$10,000 based on deficiencies found during a survey completed on 06/15/2020. Deficient practices were found in the area of patient rights.
- The Department issued a Stipulation and Order dated 06/14/2024, and fined Mount Sinai Beth Israel \$10,000 based on deficiencies found during a survey completed on 02/14/2023. Deficient practices were found in the area of patient rights.
- The Department issued a Stipulation and Order dated 08/06/2024, and fined Mount Sinai West \$10,000 based on deficiencies found during a survey completed on 03/11/2024. Deficient practices were found in the area of Patient Rights.
- The Department issued a Stipulation and Order dated 08/06/2024, and fined Mount Sinai West \$10,000 based on deficiencies found during a survey completed on 11/02/2023. Deficient practices were found in the area of CSRU - Nursing Services.
- The Department issued a Stipulation and Order dated 10/30/24, and fined Mount Sinai West \$10,000 based on deficiencies found during a survey completed on 01/24/2024. Deficient practices were found in the area of Patient Rights.

Prevention Agenda

Mount Sinai South Nassau (MSSN), in Nassau County, requests approval to certify an adult cardiac surgery program. This project will ensure that cardiac services are provided to and available for patients closer to their place of residence to improve quality of care.

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

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Use Disorders
- Prevent Communicable Diseases

The proposed project will advance the Prevention Agenda priorities of Preventing Chronic Diseases, Promoting Well-being and Preventing Mental and Substance Use Disorders, and Preventing Communicable Diseases by allowing MSSN to enhance community members' access to high-quality cardiac care and procedures, improving health and heart disease prevention.

As per the latest available report, MSSN spent \$1,734,956 on community health improvement services in 2022, representing 0.28 % of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and movable equipment are estimated at \$1,281,354, broken down as follows:

Movable Equipment	\$1,272,356
Application Fee	2,000
Processing Fee	<u>6,998</u>
Total Project Cost	\$1,281,354

The project will be financed with equity from the operations of MSSN. BFA Attachments A and B, 2023 Certified Financial Statements and 2024 Internal Financial Statements of Mount Sinai South Nassau indicating sufficient liquid resources to meet the equity requirement.

Operating Budget

The applicant has provided the Current Year (2023) results, and the First- and Third-year operating budget, in 2025 dollars. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
I/P Revenues:						
Commercial FFS	\$79,533	\$2,067,856	\$83,468	\$2,337,092	\$85,231	\$2,471,710
Commercial MC	\$51,409	164,816,924	\$53,432	173,655,638	\$54,648	179,135,503
Medicare FFS	\$17,936	110,412,942	\$19,205	120,206,485	\$19,985	126,386,876
Medicare MC	\$16,698	54,151,007	\$17,241	56,293,173	\$17,584	57,656,370
Medicaid FFS	\$13,485	10,869,051	\$14,272	11,688,398	\$14,743	12,192,610
Medicaid MC	\$8,810	37,598,973	\$8,914	38,107,593	\$8,989	38,470,894
Private Pay	\$32,299	2,487,009	\$34,375	2,750,000	\$35,033	2,837,664
All Other	\$1,989	5,347,730	\$1,989	5,347,730	\$1,989	5,347,730
Less: Bad Debt		<u>(227,496)</u>		<u>0</u>		<u>0</u>
Subtotal I/P Revenues		\$387,523,996		\$410,386,109		\$424,499,357
O/P Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$3,580	\$1,285,220	\$3,580	\$1,285,220	\$3,580	\$1,285,220
Commercial MC	\$1,564	137,304,365	\$1,564	137,304,365	\$1,564	137,304,365
Medicare FFS	\$653	50,185,348	\$653	50,185,348	\$653	50,185,348
Medicare MC	\$711	23,980,768	\$711	23,980,768	\$711	23,980,768
Medicaid FFS	\$748	4,150,220	\$748	4,150,220	\$748	4,150,220
Medicaid MC	\$397	21,022,555	\$397	21,022,555	\$397	21,022,555
All Other	\$582	<u>9,875,389</u>	\$582	<u>9,875,389</u>	\$582	<u>9,875,389</u>
Subtotal O/P Revenues		\$247,803,865		\$247,803,865		\$247,803,865
Net Patient Service Revenues		\$635,327,861		\$658,189,974		\$672,303,222
Other Operating Revenues*		147,244,308		147,244,308		147,244,308
Total Operating Revenues		\$782,572,169		\$805,434,282		\$819,547,530
Non-Operating Revenue		<u>3,391,000</u>		<u>3,391,000</u>		<u>3,391,000</u>
Total Revenue		\$785,963,169		\$808,825,282		\$822,938,530

Expenses

Operating	\$699,425,554	\$718,848,663	\$726,545,194
Capital	<u>49,120,307</u>	<u>49,247,903</u>	<u>49,247,903</u>
Total Expenses	\$748,545,861	\$768,096,566	\$775,793,097
Net Income (Loss)	\$37,417,308	\$40,728,716	\$47,145,433

IP Discharges	20,490	20,686	20,809
OP Visits	276,354	276,354	276,354

*Other Operating Revenue is comprised of: Investment Income \$15,686,000, Provider Services Agreement and Management Services Agreement \$97,919,000, Interest Income \$10,971,000, Grants \$1,221,000, Home care services \$4,603,000, Capitation revenue \$3,767,000, and Other \$13,077,000.

The following is noted concerning the submitted budget:

- The Current Year reflects the facility's 2023 revenue and expenses.
- Revenues and expenses are based upon the experience of other existing cardiac surgery programs in the New York metropolitan area and TMSH cardiac surgery program.
- The number and mix of staff are based on the experience of MSSN and MSHS providing inpatient services and on the projected number of cases and services.
- The projected utilization is based upon the experience of the cardiologists with MSSN. 196 and 319 non-TAVR cardiac surgery cases are projected in Years One and Year Three, respectively. They project between 80 and 100 structural and electrophysiology cases annually.
- Utilization by payor source is as follows:

<u>Inpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Payor:</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Commercial FFS	26	0.12%	28	0.13%	29	0.14%
Commercial MC	3,206	15.65%	3,250	15.71%	3,278	15.75%
Medicare FFS	6,156	30.04%	6,259	30.26%	6,324	30.39%
Medicare MC	3,243	15.83%	3,265	15.78%	3,279	15.76%
Medicaid FFS	806	3.93%	819	3.96%	827	3.97%
Medicaid MC	4,268	20.83%	4,275	20.67%	4,280	20.57%
Private Pay	77	0.38%	80	0.39%	81	0.39%
Charity	20	0.10%	22	0.11%	23	0.11%
All Other	<u>2,688</u>	<u>13.12%</u>	<u>2,688</u>	<u>12.99%</u>	<u>2,688</u>	<u>12.92%</u>
Total by Payor	20,490	100.00%	20,686	100.00%	20,809	100.00%

<u>Outpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Payor:</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	359	0.13%	359	0.13%	359	0.13%
Commercial MC	87,813	31.77%	87,813	31.77%	87,813	31.77%
Medicare FFS	76,816	27.80%	76,816	27.80%	76,816	27.80%
Medicare MC	33,709	12.20%	33,709	12.20%	33,709	12.20%
Medicaid FFS	5,550	2.01%	5,550	2.01%	5,550	2.01%
Medicaid MC	52,895	19.14%	52,895	19.14%	52,895	19.14%
Charity	2,230	0.81%	2,230	0.81%	2,230	0.81%
All Other	<u>16,982</u>	<u>6.14%</u>	<u>16,982</u>	<u>6.14%</u>	<u>16,982</u>	<u>6.14%</u>
Total by Payor	276,354	100.00%	276,354	100.00%	276,354	100.00%

Capability and Feasibility

Total Project Costs of \$1,281,354 will be funded with equity from the operation of MSSN. The working capital requirements are estimated at \$3,258,451, which is equivalent to two months of incremental Year One expenses and will be met with equity from operations. BFA Attachments A and B, September 2023 Certified Financial Statements and 2024 Internal Financial Statements of Mount Sinai South Nassau indicating sufficient liquid resources to meet the equity requirements.

BFA Attachment A, 2023 Mount Sinai South Nassau Certified Financial Statements, shows MSSN had positive working capital, a positive net asset position, and a net income of \$34,026,000. BFA Attachment B, 2024 Mount Sinai South Nassau Internal Financial Statements, shows MSSN maintained positive working capital, a positive net asset position, and a net income of \$38,985,000.

MSSN budget projects a net income of \$40,728,716 and \$47,145,433 in Year One and Year Three, respectively. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	2023 Mount Sinai South Nassau Certified Financial Statements
BFA Attachment B	2024 Mount Sinai South Nassau Internal Financial Statements



Project # 241258-C
NYU Langone Hospital-Brooklyn

Program: Hospital
Purpose: Construction

County: Kings
Acknowledged: June 11, 2024

Executive Summary

Description

NYU Langone Hospitals requests approval to certify a kidney transplant program within NYU Langone Hospital - Brooklyn, a 444-bed full-service academic medical center at 150 55th St, Brooklyn, New York (Kings County). The kidney transplant program will provide a full range of kidney transplantation services, including pre-transplant evaluation, transplant surgery, and post-transplant care through NYU's ambulatory care network. The program will also conduct outreach to dialysis centers and community physicians to identify patients approaching end-stage renal disease (ESRD) and promote access to comprehensive kidney transplant services.

The program is projected to perform forty (40) kidney transplants in the first full year of operation and one hundred (100) kidney transplants in Year Three.

OPCHSM Recommendation
Contingent Approval

Need and Program Summary

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

Financial Summary

The application fee of \$2,000 is the only project cost.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,035,089	\$19,273,346
Expenses	<u>\$9,409,662</u>	<u>\$16,697,320</u>
Net Income	\$625,427	\$2,576,026

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of OPTN letter granting NYULH-Brooklyn approval to perform adult kidney transplants, including approval of the practitioners proposed as primary physician and primary surgeon. [HSP]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Actively participating in the New York Center for Kidney Transplantation, aka NYKidney, by sharing data, participating in peer review, research, quality improvement, and other activities endorsed by the Department, including but not limited to coordinating the facility's plan with efforts that NYKidney may be conducting. [HSP]
3. Implementing and enhancing, as needed, active outreach efforts to educate and support NYU Langone Hospitals (NYULH) affiliated and non-affiliated hospitals and providers in underserved areas, facilitating access to kidney transplant evaluation and care. [HSP]
4. Continuing to commit and devote resources to improving organ donation and NYS Donate Life Registry enrollments as a top priority in all system hospitals. This commitment must be reflected in a written plan to create a system-wide institutional culture that supports organ donation and NYS Donate Life Registry enrollment, which is continually evaluated and updated as needed. This plan should include, but not be limited to:
 - a) Implementation of and participation in programs and initiatives to promote health and prevent diseases associated with the need for organ and tissue donation and transplantation;
 - b) Implementation of practitioner-focused education and outreach efforts to inform them of the availability and breadth of NYULH-Brooklyn kidney transplant services.
 - c) Improving communication and coordination with the organ and tissue recovery agencies, for example, establishing onsite transplant coordinators, conducting regular multidisciplinary clinical case reviews to identify missed opportunities and/or opportunities for improvement, and reporting and reviewing aggregate donor data jointly with the OPO(s);
 - d) Enlisting participation, improving coordination, and holding staff throughout the facility accountable as partners in achieving these goals, including but not limited to critical care, emergency department, and palliative care staff;
 - e) Increasing awareness and education of staff about organ donation throughout system facilities, and the communities they serve, by partnering and coordinating with organ donation stakeholders, e.g., donation and transplant advocates, recovery agencies and community-based organizations such as interfaith organizations, organizations that provide services to different ethnic and cultural groups, etc. to implement awareness and education initiatives;
 - f) Share lessons learned and best practices with members of the organ donation and transplant community, including but not limited to other transplant centers;

- g) Conducting specific activities to improve enrollment in the NYS Donate Life Registry;
- h) Annually for the first five years and upon request, providing the Department with information and updates about the plan, including progress towards meeting the goals, benchmarks, and timelines developed and described above. [HSP]

Council Action Date
June 18, 2025

Program and Need Analysis

Project Description and Background

New York University Langone Hospitals (NYULH) seeks approval to certify and implement an adult kidney transplant program at NYULH—Brooklyn. The facility is located at 150 55th Street in the Sunset Park neighborhood of Brooklyn.

The facility goals for this project are to:

1. Increase access to kidney transplantation for all New Yorkers, most notably for Brooklyn residents.
2. Accommodate kidney transplant patients who are currently seeking care at NYU Langone Hospital – Manhattan campus.
3. Improve the equity of kidney transplants. The applicant notes kidney transplants disproportionately affect black patients four times more than white patients.
4. Meet the U.S. Department of Health and Human Services directive to transform the national organ transplant system to better serve patients, including initiatives to dramatically increase the number of and equity in organ transplants.

NYULH is a 501(c)(3) New York not-for-profit quaternary care teaching hospital with inpatient hospital facilities located in Manhattan, Brooklyn, and Long Island, and four emergency departments in the aforementioned boroughs, including a freestanding emergency department in the Cobble Hill section of Brooklyn. The NYU Langone Hospital System consists of four hospital centers: Tish/Kimmel, Langone Orthopedic Hospital, Brooklyn, and Long Island. Under separate CON (CON #241192), NYULH is seeking a merger of the Joseph and Diane Steinberg Ambulatory Care Center and Long Island Community Hospital. A fully integrated electronic medical record (Epic) is used across inpatient and ambulatory settings. This provides real-time metrics and dashboards across all sites of service to focus on quality, safety, patient experience, values, and efficiency.

NYULH-Manhattan has CMS certified transplant programs for kidney, liver, heart, lung, and pancreas. They perform both adult and pediatric transplants. In 2016, the NYULH system established a Transplant Institute at the NYU-Manhattan campus. The NYULH Transplant Institute facilitates collaboration among practitioners to facilitate and improve patient care, practitioner education, and research advancing the field of organ donation and transplantation and addressing barriers to kidney transplantation across the NYULH system. The Phoenix module in Epic tracks transplant-specific information so patients are actively managed from the point of referral through post-transplant. Organ donation has been facilitated by partnering with LiveOnNY, the metropolitan NY organ procurement organization, and the establishment of a “donor care unit” at the facility.

The Transplant Institute employs a full-time outreach nurse coordinator and a nephrologist, Director of Outreach and Education, as well as five transplant nephrologists with a dedicated portion of their time for outreach efforts. They note an opportunity to extend outreach and education to patients most in need.

The Transplant Institute offers other resources such as:

- Dedicated transplant financial coordinators who work with patients to apply for Medicare, Medicaid, or other insurance benefits for which they may be eligible. The transplant financial coordinators are available Monday through Friday, 8:00 am-5:00 pm.
- A contract with the New York Legal Assistance Group (NYLAG) to thoroughly explore citizenship and PRUCOL status options for patients in need.
- A screening practice that allows the transplant evaluation process to start for patients while insurance options are pursued.

The applicant notes that NYU has 24 nephrologists within the physician network and 290 non-NYU affiliated nephrologists and 140 different dialysis units in their network.

Significant growth in the quantity of organ transplants and quality of transplant care provided by NYULH-Manhattan is evidenced in ongoing data and reports provided by the federally contracted Organ Procurement Transplant Network (OPTN) and Scientific Registry of Transplant Recipients (SRTR). NYULH-Brooklyn is an academic medical center. The facility is licensed to operate 444 beds and is designated as a Level 1 Adult Trauma Center, a Level 2 Perinatal Center, a STEMI Center, and a Comprehensive Stroke Center. Licensed beds in this facility include classification/counts of: Coronary Care – 8, Intensive Care – 28, Medical/surgical – 271, Pediatric – 10, and others. In addition, the application notes that there are 115+ NYULH system sites throughout Kings County, including the first federally qualified health center, and a kidney transplant evaluation clinic in Brooklyn, so patients can receive pre and post-transplant services in their community. Partnerships with One Brooklyn Health and initiating programs such as Building Bridges have been established to facilitate patient access to health care in the borough.

NYU Langone Hospital – Brooklyn is licensed to provide the following services: Ambulatory surgery – Multi Specialty, Cardiac Catheterization both adult diagnostic and Percutaneous Coronary intervention, and Electrophysiology Services, Certified Mental Health Services O/P, Emergency Department, Lithotripsy, MRI, Medical Services both primary care and other medical specialties, acute renal dialysis and others. The application cites multiple quality measures in which NYU-Brooklyn outperforms other Article 28 facilities in the borough.

The applicant seeks to expand adult kidney transplant services to better serve the residents of Brooklyn. They recount both socioeconomic factors and physical conditions that are experienced by Brooklyn residents as support for the need for increased access to kidney transplant services in the borough. Socioeconomic factors identified include that the median annual household income of Brooklyn residents is \$112,493, less than that of NYC and NYS. In addition, the applicant reports that in their own data collection, it was identified that 20.7% of Brooklyn households make less than \$25,000 annually, a percentage higher than that of NYS (17%).

It is well known that in the United States, diabetes and high blood pressure are the leading causes of kidney failure. The applicant presents data published in several 2023 NYS Department of Health reports, which identify approximately 10.5% of adults residing in Kings County (Brooklyn) being diagnosed with diabetes compared to 7.1% of adults in New York County. In addition, the reports note that in nearby counties, 14.4% of adults in Richmond County and 13.1% of adults in Queens County have diagnosed diabetes.

Additional 2023 DOH report findings identified hypertension trends similar to the diabetes rates, that is, 27.5% of adults in Kings County, 33.0% of adults in Richmond County, and 30.2% of adults in Queens County have been diagnosed with high blood pressure as compared to 23.5% of adults in New York County. They point out that these disparities in Kings, Richmond, and Queens Counties when compared to New York County demonstrate the need for local access to kidney transplantation services.

The applicant submitted data specifically in support of the need for additional resources to provide care to Brooklyn residents with chronic kidney disease and end-stage renal disease requiring dialysis. An analysis of SPARCS data reveals that in each year 2021, 2022, and 2023, approximately 16,000 patients, or 24% of discharges from non-Kings County metropolitan NY facilities, were patients that resided in Kings County.

In addition, the applicant referenced data from the National Institute of Health's National Institute of Diabetes and Digestive and Kidney Diseases' Renal Data System. USRDS data used in combination with OPTN data reveals that the:

- Incidence count of Kings County residents receiving dialysis per million population is much higher than those residing in New York and Nassau Counties, and
- Kidney transplant rate per 100 dialysis patients is much lower for Kings County residents than those residing in New York and Nassau Counties.

This pattern has persisted through several annual reporting cycles.

A separate analysis of OPTN data revealed that 82% of Brooklyn residents who received a kidney transplant traveled outside of Brooklyn to get it.

If the application is approved, NYULH commits to conduct outreach to dialysis centers and community physicians in Brooklyn to identify patients approaching end-stage renal disease and promote access to comprehensive kidney transplant services

The applicant projects performing 40 kidney transplants in the first full year of operation and 100 kidney transplants in Year Three of operation at NYULH-Brooklyn, with recipients being identified via a redistribution of Brooklyn residents currently listed and receiving transplant-related care at NYULH-Manhattan and through partnership and outreach activities.

If the application is approved, kidney transplant physicians and surgeons already practicing at the NYULH-Manhattan facility will be transitioned to staff and leadership positions in the new NYULH-Brooklyn's kidney transplant program. Members of the multidisciplinary team required to provide organ transplant care have been identified to be able to quickly get the program off the ground upon approval of the submitted CON and approval of the OPTN. NYULH has drafted its application to the OPTN seeking approval to start the program. Submission of the application is pending approval of this CON application.

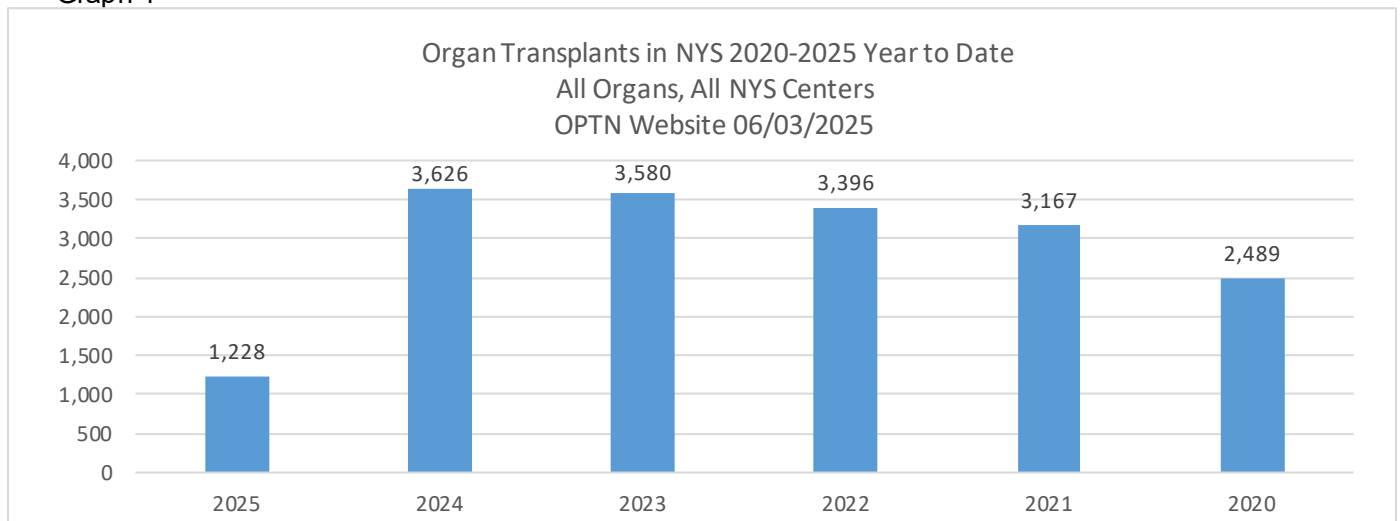
Transplant Program Review

In addition to materials provided as part of the CON application and the applicants response to the Department's Request for Additional Information, staff reviewed a draft of the facilities OPTN application seeking approval to provide adult kidney transplant services at NYULH-Brooklyn, NYULH-Manhattan's most recent CMS transplant recertification survey and relevant state and transplant center data. Program received feedback on the application from three external reviewers with expertise in kidney transplantation, one of which is a member of the Transplant Council.

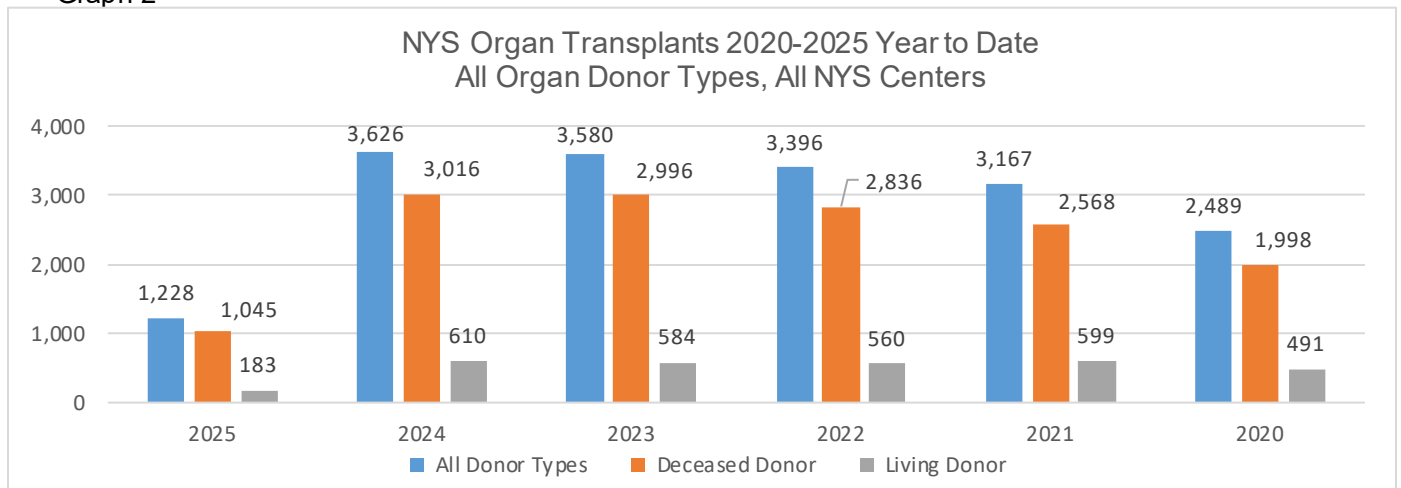
Status of Donation and Transplantation in NYS

As Graph 1 indicates, there were 3,626 organ transplants in 2024, and since 2020, transplants in NYS have increased 31%. Graph 2 shows that while deceased donor transplants are continuing to climb, living donor transplants have remained relatively flat.

Graph 1



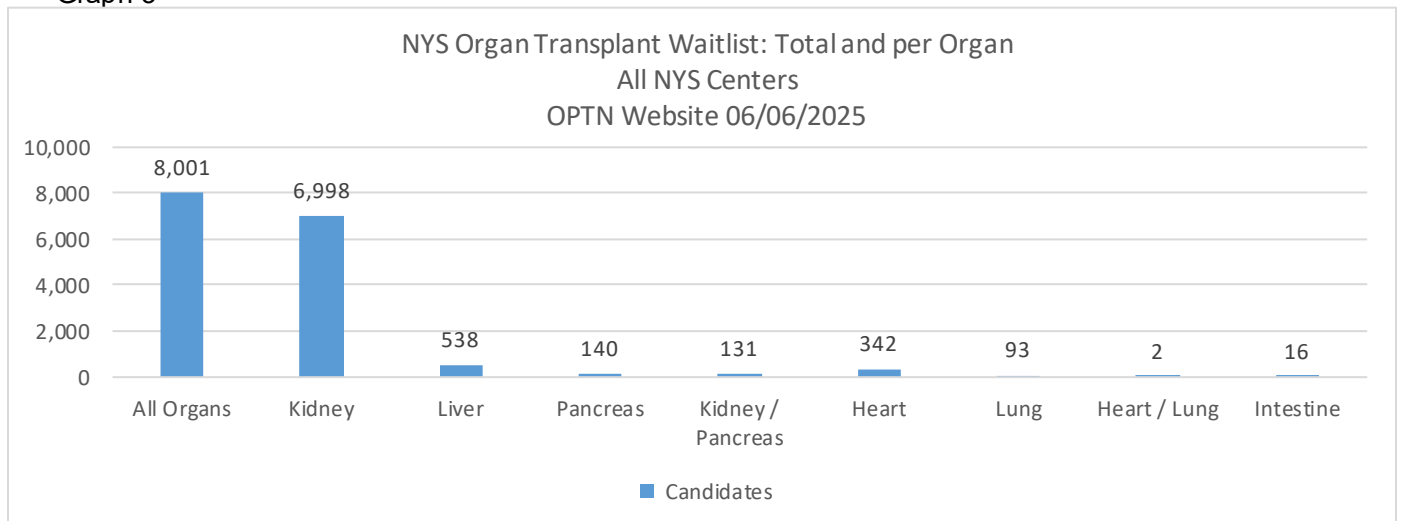
Graph 2



Waitlist

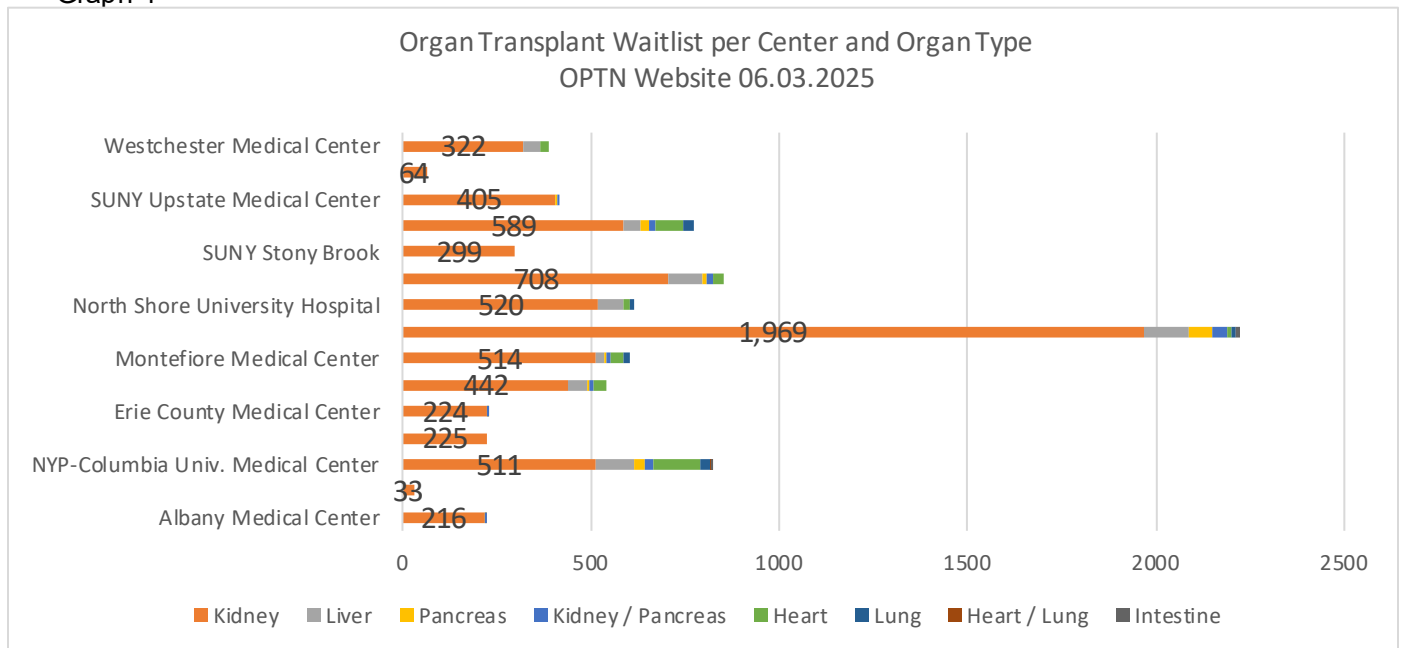
Graph 3 reveals that the total number of people waiting for an organ transplant in NYS is approximately eight thousand, with kidneys being the organ in most need by far.

Graph 3



In Graph 4, we see how many people each transplant center in NYS has on its waitlist for each of the organ types that they transplant. Not unlike that state waitlist, the majority of people waiting for an organ at each NYS center are waiting for a kidney, with Mount Sinai having the largest kidney transplant waitlist. The size of Weill Cornell's kidney waitlist is a distant second. Graph 4 also shows that, unlike the statewide waitlist, where the liver is the second most needed organ by patients waiting for a transplant, some facilities with both liver and heart transplant programs have larger heart waitlists than liver waitlists.

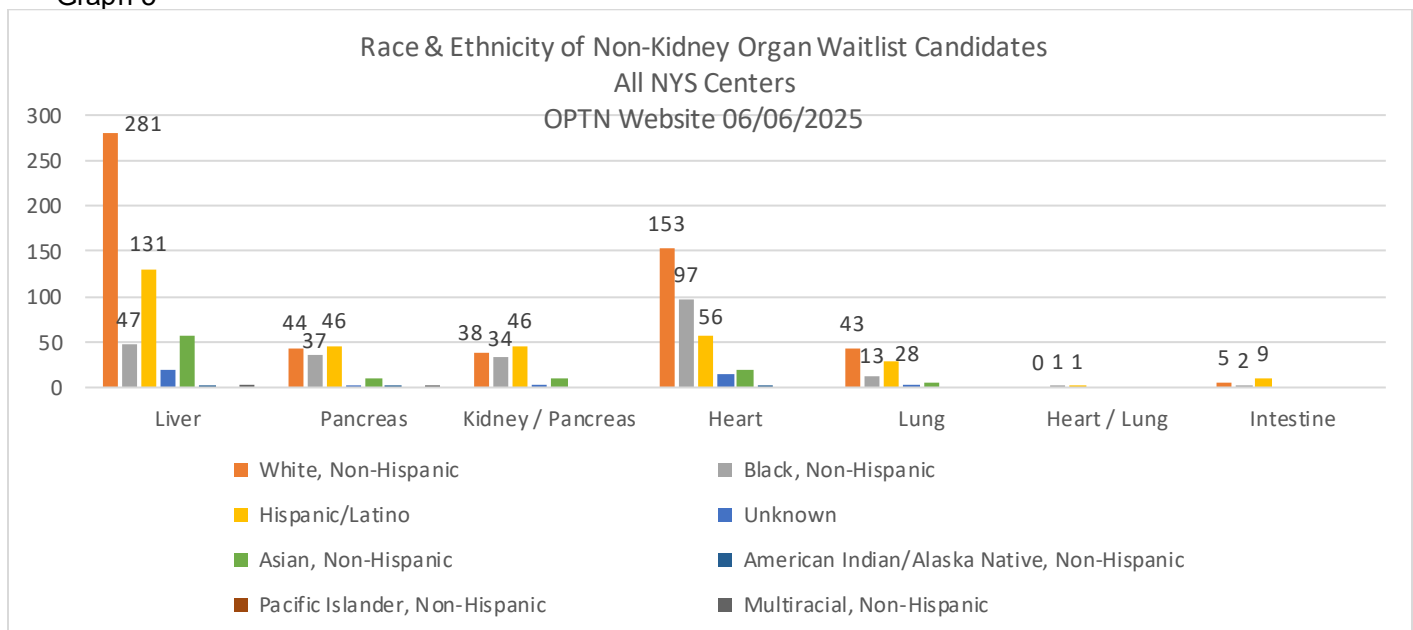
Graph 4



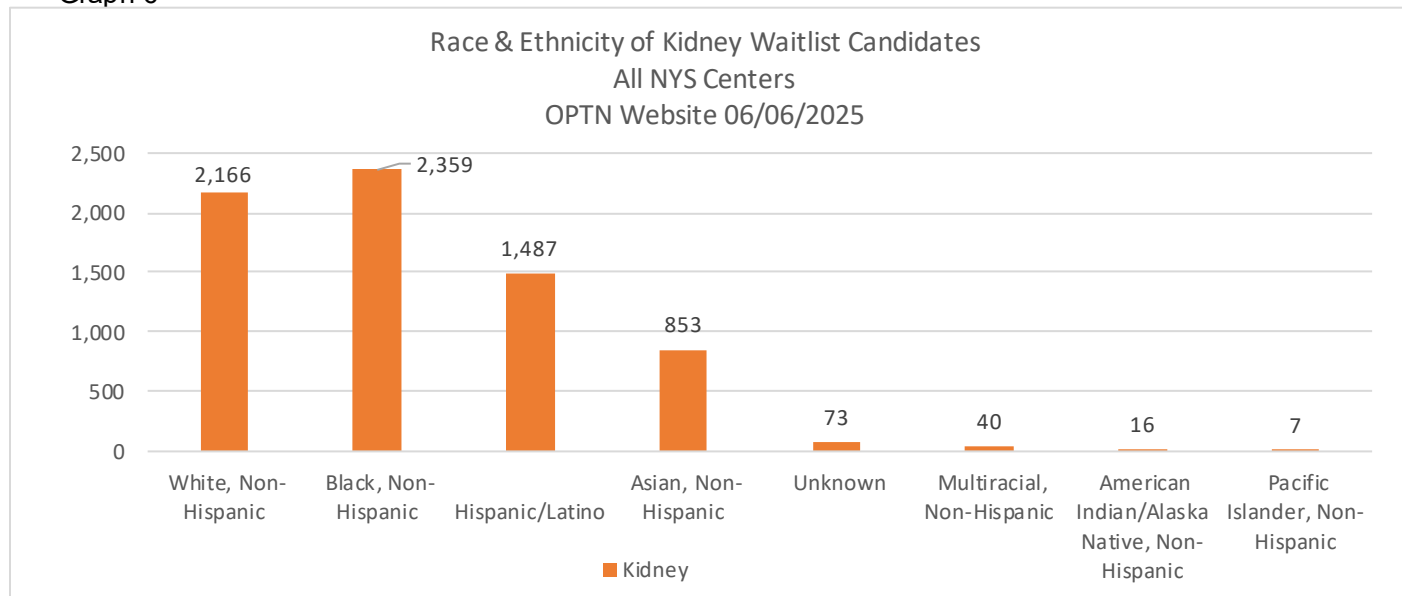
Graphs five and six indicate the racial and ethnic background of waitlist candidates from all New York transplant centers. Graph 5 shows this information for all non-kidney transplant waitlist candidates and Graph 6 shows it for kidney transplant waitlist candidates.

There are slightly more black, non-Hispanic kidney transplant candidates than there are white, non-Hispanic candidates on this list, with Hispanic/Latino and Asian, non-Hispanic candidates coming in third and fourth on the waitlist. White, non-Hispanic transplant candidates dominate the waiting lists for livers and hearts. Whereas Hispanic/Latino candidates are the second most frequent ethnic/racial group on the liver waiting list, black, non-Hispanic candidates are the second most frequent ethnic/racial group waiting for a heart.

Graph 5

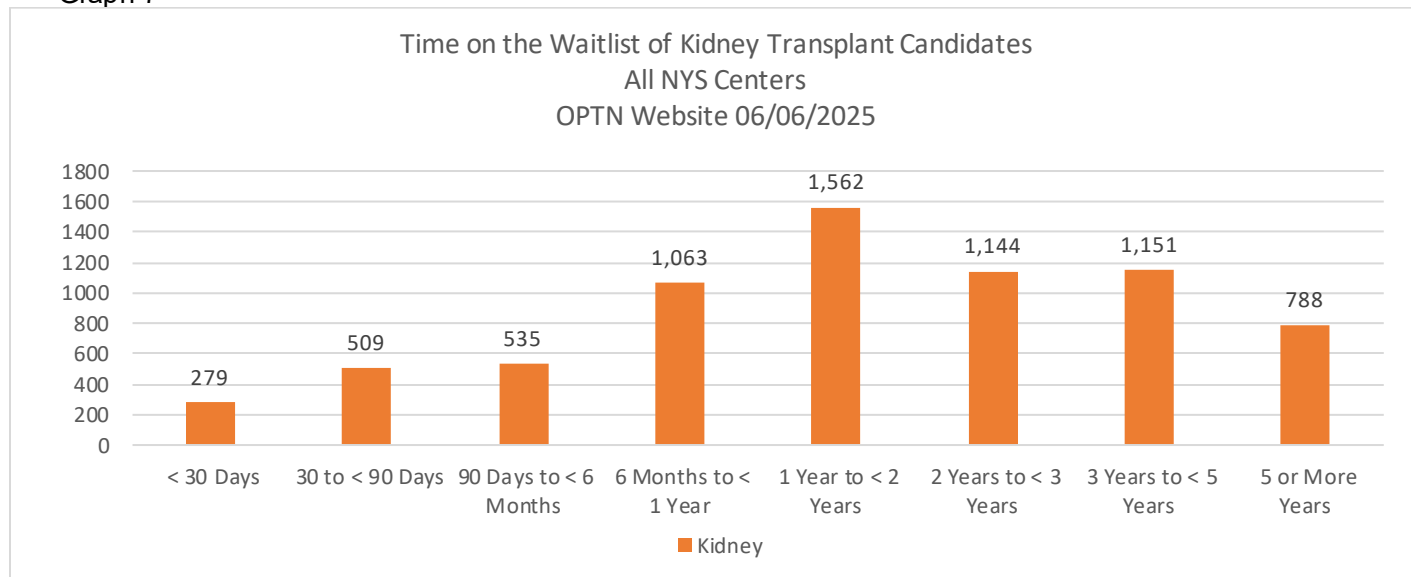


Graph 6

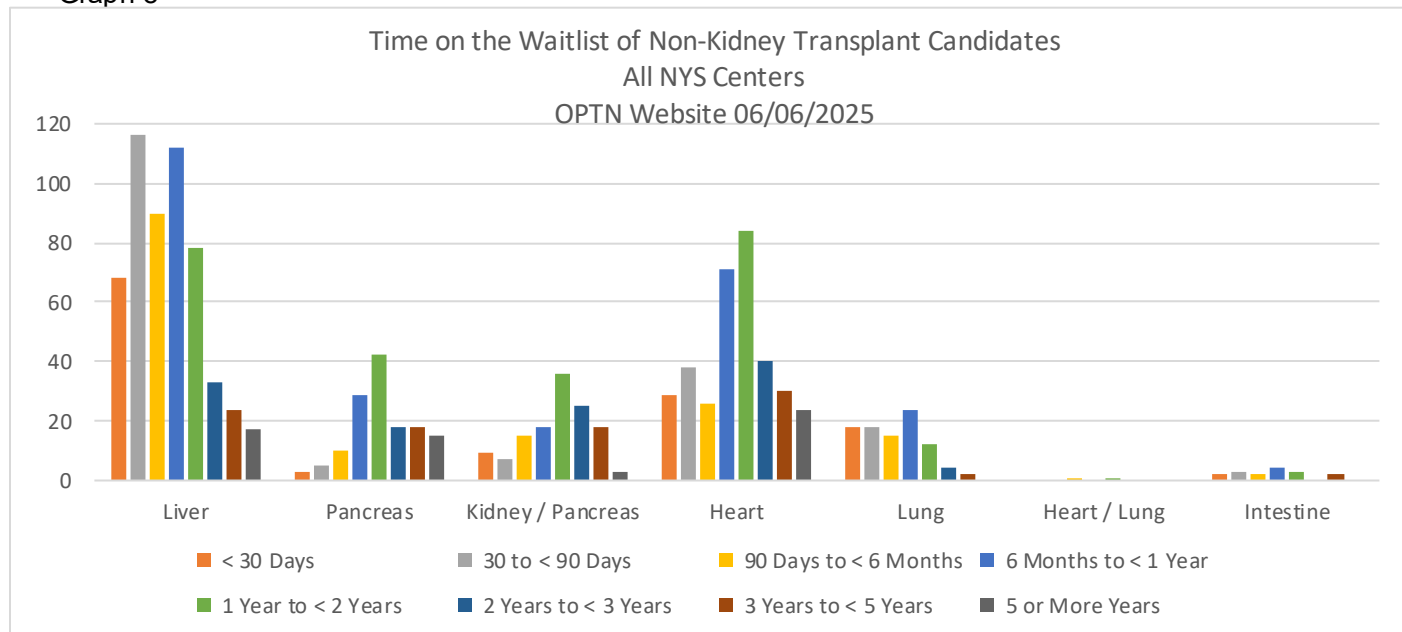


Graphs seven and eight show the length of time that waitlist candidates have been waiting for a kidney and other organs. Graph 7 shows that most people waiting for a kidney wait at least one year, with the majority of waitlist candidates not receiving a kidney for much longer than that. Graph 8 shows that each organ has a somewhat different wait time pattern. Heart waitlist candidates most frequently receive a transplant between 6 months and 2 years after being added to the list, whereas a significant number of liver waitlist candidates seem to receive their organ within 6 months of being added to the list.

Graph 7



Graph 8



Status of Kidney Transplantation in NYS

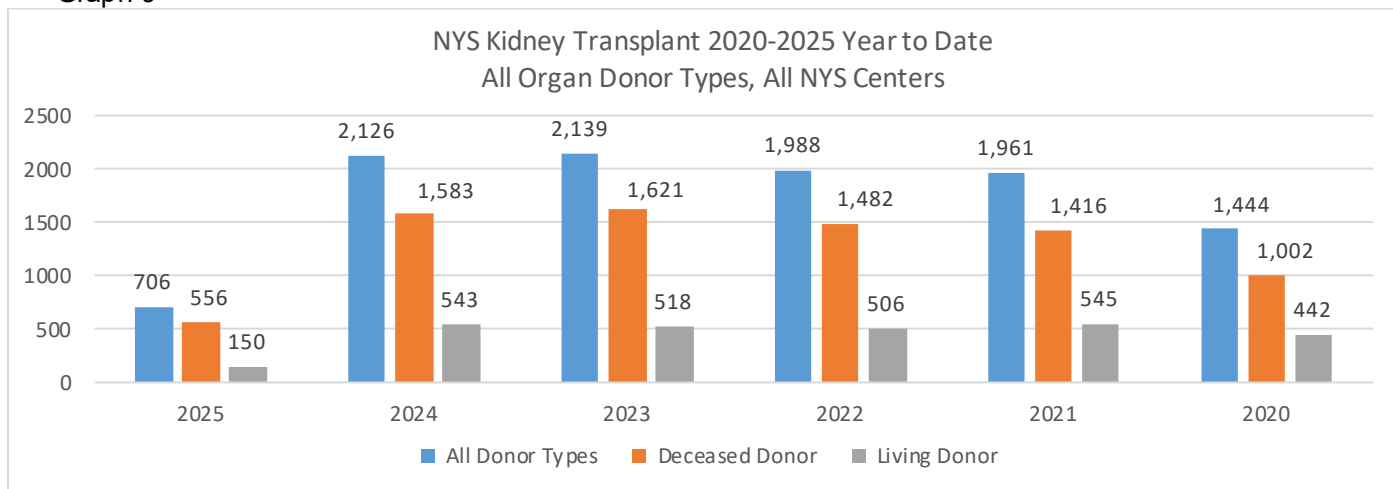
There are 15 transplant centers in NYS that perform kidney transplants. Fourteen of them are licensed by NYS. Six of the NYS licensed centers are located in New York City; three are located on Long Island. Table 1 shows the total number of kidney transplants performed by all New York centers and the number performed by each center, 2020-2025, year to date. NYU Langone-Manhattan, NYP-Weill Cornell, and Mount Sinai Medical Center consistently perform the most kidney transplants per year.

Table 1: Number of Kidney Transplants All Centers & Per Center

	2025 YTD	2024	2023	2022	2021	2020
All Centers	706	2,126	2,139	1,988	1,961	1,444
Albany Medical Center	13	34	34	35	29	69
NYP-Columbia Medical Center	79	223	227	190	208	177
SUNY Downstate Medical Center	14	44	60	61	43	3
Erie County Medical Center	34	137	141	141	139	130
U of R, Strong Memorial Hospital	45	93	104	104	104	86
Montefiore Medical Center	70	221	247	199	171	114
Mount Sinai Medical Center	94	260	276	279	300	194
North Shore University Hospital	70	207	195	134	119	74
NYP-Weill Cornell Medical Center	83	317	280	236	265	194
SUNY Stony Brook Medical Center	21	61	64	73	89	88
NYU Langone Health	119	338	329	335	311	192
SUNY Upstate Medical Center	23	77	94	97	86	60
Westchester Medical Center	24	93	66	86	69	49
LIJ-Cohen Medical Center	3	10	7	7	8	6
James J. Peters VA Medical Center	14	11	15	11	20	8

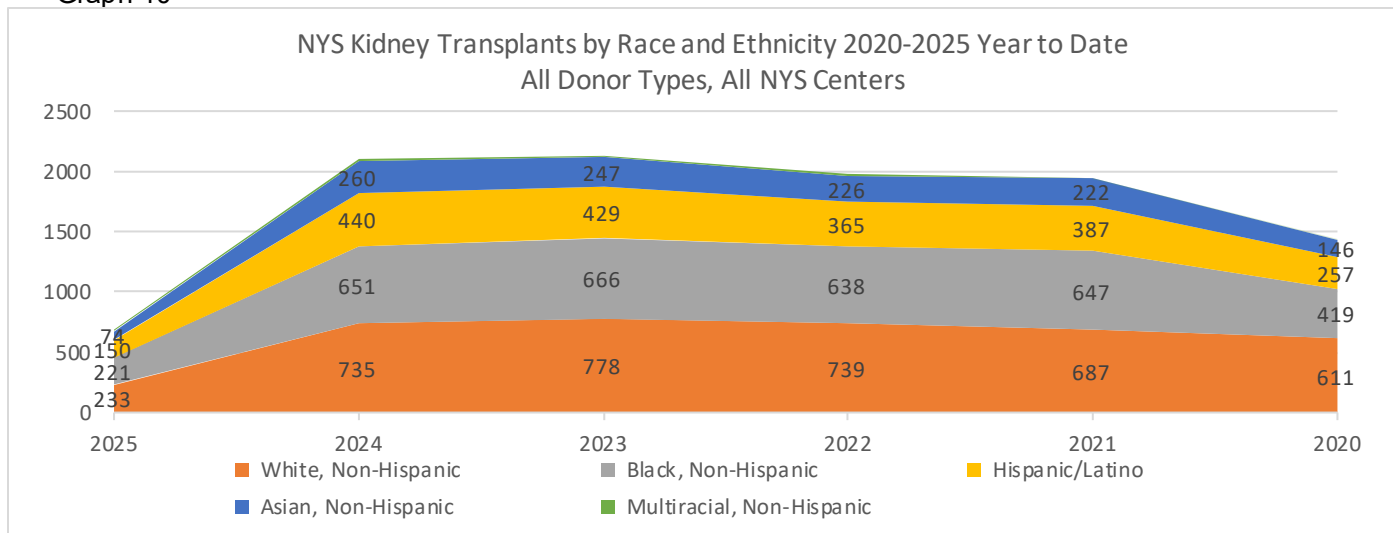
Similar to Graph 1, Graph 9 shows an approximate growth of 30% in kidney transplants between 2020 and the close of 2024, with most of the growth being in deceased donor transplants, with living kidney donor numbers remaining fairly steady.

Graph 9



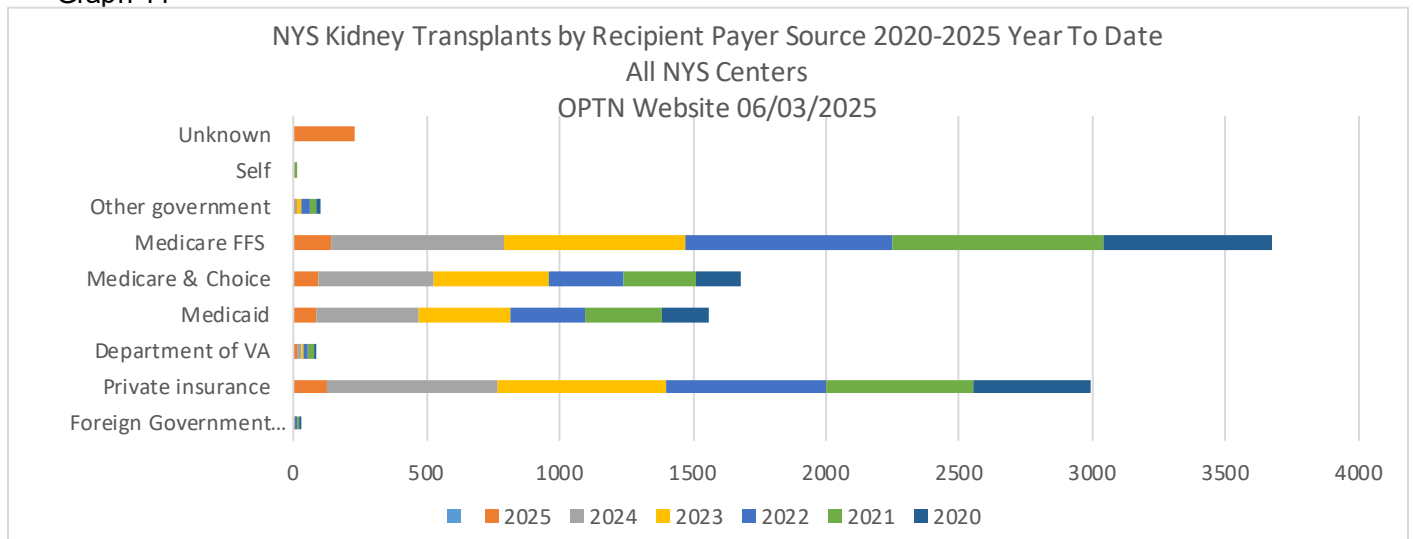
Somewhat inconsistent with Graph 6, where there are more black, non-Hispanic kidney waitlist candidates than white, non-Hispanic kidney waitlist candidates, Graph 10 shows more white people receiving kidney transplants than black people between 2020 and the close of 2024 and 2025, year to date.

Graph 10



Graph 11 shows that over the 2020-2025 period that Medicare Fee for Service and Private insurance are the primary payor source for kidney transplant care.

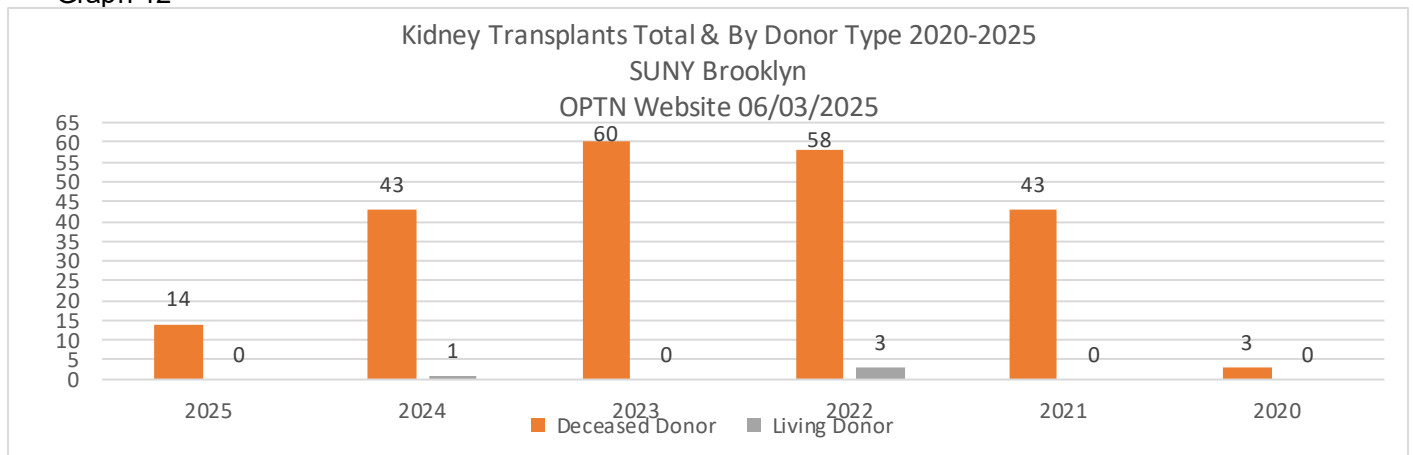
Graph 11



Status of Kidney Transplantation in Brooklyn

SUNY Downstate, located in Brooklyn, has an active kidney transplant program. As shown in Graph 12, SUNY Downstate's kidney transplant volume has vacillated through time, as low as three and as high as 60 kidney transplants between 2015 and the present. Since 2021, their volume has been above 40 kidney transplants per year.

Graph 12



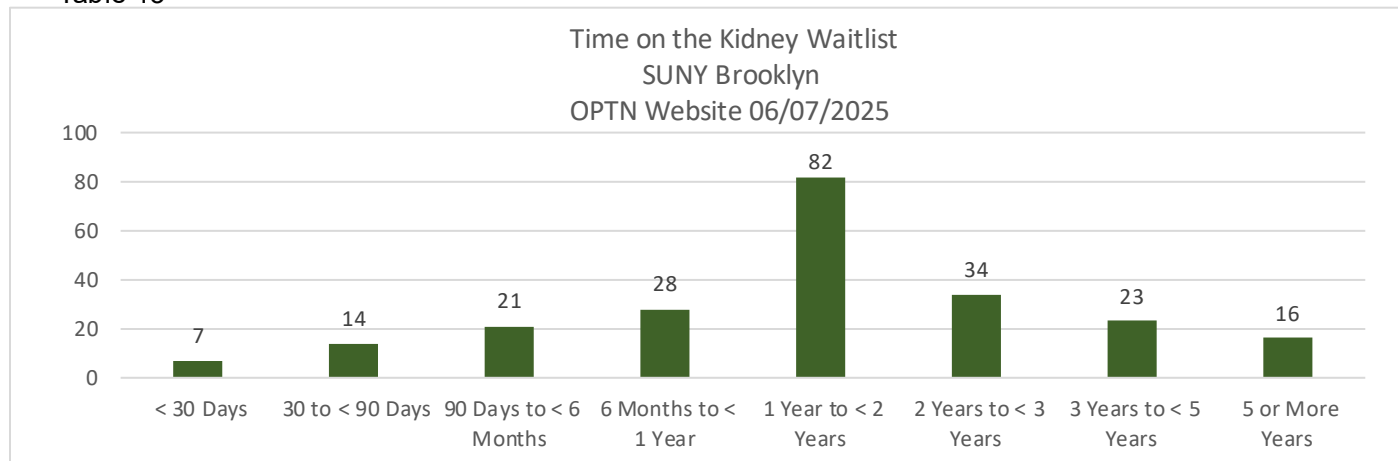
SUNY Brooklyn has 225 kidney transplant candidates on their kidney waitlist and primarily lists and transplants black, non-Hispanic patients. Their primary payor sources for transplant care are the same as the rest of the state, that is Medicare Fee for Service and private insurance. Graph 13 indicates the number of patients added to the kidney waitlist by SUNY Brooklyn from 2020 to present.

Table 2: Additions to SUNY Brooklyn Waitlist 2020-Present

	2025	2024	2023	2022	2021	2020
Waitlist Additions	36	113	139	95	96	6

Table 13 is consistent with the statewide time on the kidney waitlist graph in that it shows that most patients stay on the list for a least one year.

Table 13



Comparison of Kidney Transplant Program Performance Measures

Table three shows specific metrics used by the OPTN and CMS to evaluate transplant center performance and quality of care for select metropolitan NYC transplant centers. Values in the table below that are bolded are worse than one or both the Donor Service Area and the US average for that measure.

While NYU-Manhattan has the shortest median time on the waitlist before transplant, NYP Columbia and Weill Cornell are also significantly below average (better) on this measure. Mount Sinai, Montefiore, and SUNY Brooklyn are significantly above average (worse) on this measure. Only Mount Sinai and SUNY Brooklyn's observed transplant rates are less than the expected rate.

Performance on one-year post-transplant graft survival and 1-year graft survival hazard ratio shows that NYU, Columbia, Mount Sinai, and North Shore perform on this measure are all better than the national average. While some of the transplant centers whose data is posted below are worse than the average for 2 or 3 of these measures, it is notable that SUNY Brooklyn's performance is worse than the average on all four of the measures.

Table 3: Metropolitan NYC Transplant Center Performance on Transplant Quality Measures

Metropolitan NY Transplant Center Adult Kidney Tx Performance Metrics Scientific Registry of Transplant Recipients Center Specific Reports, 01/2025				
Center	Median Months on Waitlist to Transplant	Transplant Rate (Observed vs Expected)	1-Year Post-Transplant Graft Survival	1-Year Graft Survival Hazard Ratio*
NYU Langone-Manhattan	9.10	O>E	96.90	0.54
NYP Columbia Medical Center	13.70	O>E	95.85	0.97
Mt Sinai Medical Center	>72	O<E	95.44	0.96
North Shore University Hospital	30.60	O>E	95.11	0.91
NYP Weill Cornell Medical Ctr.	19.90	O>E	93.89	1.20
Montefiore Medical Center	64.90	O>E	93.77	1.04
SUNY Downstate/Brooklyn	>72	O<E	88.05	1.47
LiveOnNY Donor Service Area	31.20	N/A		
U.S.	29.30		94.97	1.00
<p>* The hazard ratio provides an estimate of how the transplant program's results compare with what was expected based on modeling the transplant outcomes from all U.S. programs. A ratio above 1 indicates higher than expected graft failure rates (e.g., a hazard ratio of 1.5 would indicate 50% higher risk), and a ratio below 1 indicates lower than expected graft failure rates (e.g., a hazard ratio of 0.75 would indicate 25% lower risk). If the program's graft failure rate were precisely the expected rate, the estimated hazard ratio would be 1.0.</p>				

Summary Review of NYULH Application to Certify an Adult Kidney Transplant Program in Brooklyn

Both DOH staff and external parties reviewed NYULH CON application and associated materials seeking to certify a new kidney transplant program at the NYU Brooklyn Hospital. The Department identified a number of experts in the field of nephrology and Kidney transplant, provided them with the information contained within this Exhibit and requested feedback on the merits of the proposed project, any strengths or weaknesses in the project discernable from the information provided, and the need for an additional kidney transplant program in NYS Kings County.

External Review

External reviewers noted that the NYU Langone Hospital CON application and associated materials seeking to certify a new kidney transplant program at NYU- Brooklyn was thorough and evidences the facilities plans and capabilities of adherence to OPTN and CMS requirements for kidney transplant centers.

External reviewers recommend approval of the project.

OPTN Application Review

NYULH has not yet submitted their Organ Procurement and Transplant Network (OPTN) application seeking approval to provide kidney transplant services at their Brooklyn location. Staff and external reviewers found the application to be strong and contain evidence of compliance with OPTN and CMS requirements for transplant programs.

Compliance with Applicable NYS Codes, Rules and Regulations

NYU Langone - Brooklyn has received a total of 5 citations resulting from onsite allegation surveys between January 2021 and May 2025. Posted citations issued include:

- 11/29/2021 Complaint investigation survey: Nursing Care Plan deficiency
- 5/12/2022 Complaint investigation survey: Physical Environment, Nursing Services and Infection Prevention and Control and Antibiotic Stewardship Program.
- 1/16/2024 Complaint investigation survey: Nursing Services
- 10/29/2024 Complaint investigation survey: Patient Rights, Discharge Planning and Surgical Services
- 4/29/2025 Complaint investigation survey: Patient Rights, Nursing Services, and Emergency Services

Adherence of NYULH-Manhattan to CMS Conditions of Participation for Transplant Program

NYULH-Manhattan underwent its most recent CMS re-certification survey of its kidney, liver, heart, lung, and pancreas programs in 2022. During that survey, one standard level deficiency was found and corrected.

Prevention Agenda

NYU Langone Hospitals (NYULH) requests approval for the implementation of a kidney transplant program at its Brooklyn location in Kings County. The project aims to expand access to comprehensive kidney transplant services to Brooklyn residents.

NYU Langone Hospitals (NYLUH) is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

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

The proposed project will advance the Prevention Agenda priority of Preventing Chronic Diseases by allowing NYULH Brooklyn to provide comprehensive chronic disease management care to its patient population.

As per the latest available report, in 2021, NYULH spent \$35,214,098 on community health improvement services, representing 0.53 % of total operating expenses.

Program Conclusions and Recommendation

This application reflects that the NYU Langone Hospital System and NYU Langone - Brooklyn Hospital is dedicated to increasing the availability of Nephrology and Kidney organ transplantation to the residents of Brooklyn and Kings County.

The application and responses to Department requests for additional information assured the Department that NYU Langone – Brooklyn, with the support and guidance of the NYU Langone Hospital system and Manhattan based Transplant Institute, has the structure, processes, staff and other resources to implement a kidney transplant program.

The performance of the transplant programs at the NYULH Manhattan location have shown significant growth in recent years and consistently attain or exceed performance on transplant quality measures.

Program recommends approval of the application with contingencies and conditions.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget for the first and third years of operation of the service. The budget includes revenues and expenses associated with the hospital stay for living kidney donors as well as for the recipients. The budget is summarized below:

	<u>First Year</u>		<u>Third Year</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Inpatient Revenue				
Commercial MC	\$50,928	1,928,994	\$70,574	\$3,167,656
Medicare FFS	\$44,197	\$3,627,040	\$77,799	\$7,568,697
Medicare MC	\$44,126	\$1,949,822	\$78,136	\$4,093,126
Medicaid FFS	\$28,644	\$361,644	\$36,191	\$541,672
Medicaid MC	\$28,613	\$2,167,528	\$43,453	\$3,902,196
All Other				
Total Inpatient Revenue		\$10,035,089		\$19,273,346
Inpatient Expense				
Operating	\$37,001	\$9,409,662	\$55,844	\$16,697,320
Capital				
Total Expense		\$9,409,662		\$16,697,320
Net Income (Loss)		<u>\$625,427</u>		<u>\$2,576,026</u>
Patient Discharges		255		299
Cost per Procedure		\$37,001		\$55,844

The budget is based on the following assumptions:

- Inpatient expenses apply to the actual transplant procedure and full inpatient stay.
- The clinical program assumes organs will come from both live and deceased donors. All related live donor expenses as well as the costs related to deceased donor organ acquisition are included in inpatient expenses.
- Fees for the United Network for Organ Sharing and New York Organ Donor Network are included as part of the inpatient expenses.

Utilization by payor source is anticipated as follows:

<u>Payor Source</u>	<u>Year One</u>	<u>Year Three</u>
Inpatient		
Commercial Managed Care	14.9%	15.05%
Medicare FFS	32.16%	32.44%
Medicare MC	17.25%	17.39%
Medicaid FFS	5.1%	5.1%
Medicaid MC	29.8%	30.02%
Other	<u>.78%</u>	<u>0%</u>
Total	100.00%	100.00%

The budget is based on NYS DRG 440 (Medicaid) and MS DRG 652 (Medicare) for kidney transplants for reimbursement of costs. Reimbursement for other payors is anticipated to approximate Medicaid. Revenues and expenses are based on the existing adult kidney transplant program.

Capability and Feasibility

There is no project cost associated with this application.

The submitted budget indicates a net income of \$625,447 and \$2,576,026 during Year One and Year Three, respectively. The budget is based on existing reimbursement methodologies, including reimbursement for both donors and recipients. The submitted budget appears reasonable.

BFA Attachment A, Financial Summary - 2022-2024 NYU Langone Hospitals Certified Financial Statements, shows average positive working capital, an average positive net asset position, and a net income of \$890,451,000 as of August 31, 2024.

BFA Attachment B, Financial Summary - September 1, 2024 - November 30, 2024, Internal Financial Statements of NYU Langone Hospitals, show the entity had a positive working capital position and a positive net asset position during the period shown. Also, the entity achieved a net income of \$281,574,000.

Conclusion

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

Attachments	
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BFA Attachment A	Financial Summary - 2022-2024 NYU Langone Hospitals Certified Financial Statements
BFA Attachment B	Financial Summary- September 1, 2024 - November 30, 2024, Internal Financial Statements of NYU Langone Hospitals.



Department of Health

Public Health and Health Planning Council

Project # 251101-B

Bronx Endovascular Center LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction

County: Bronx
Acknowledged: March 4, 2025

Executive Summary

Description

Bronx Endovascular Center, LLC (the Center), an existing Delaware Limited Liability Company licensed to do business in New York State, is requesting approval to establish and construct a single-specialty Freestanding Ambulatory Surgical Center (FASC) specializing in vascular surgery. This project will renovate and convert an existing, private office-based surgical practice at 1733 Eastchester Road, Suite 2, Bronx, New York (Bronx County). The Center will occupy approximately 5,200 square feet of space and have two (2) operating rooms.

The proposed members of Bronx Endovascular Center, LLC, are detailed below:

Bronx Endovascular Center, LLC	
Members	Ownership %
Raymond D. Figueroa	50%
Dr. Zaher Hamadeh	50%

Three (3) physicians, Dr. Joseph Shams, Dr. Noam Spinowitz, and Dr. Zaher Hamadeh, have committed to perform procedures at this proposed FASC. These procedures are currently performed at their private practice locations and in one case, another Article 28 FASC, NY Endovascular Center. Dr. Zaher Hamadeh will serve as Medical Director of the Center.

A Transfer and Affiliation Agreement has been executed with Montefiore Medical Center (Einstein Campus), .6 miles and 4 minutes away from the center.

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,575 procedures in Year One and 2,881 procedures in Year Three, with Medicaid at approximately 14.8% and 14.6%, and Charity Care at 2%.

Program Summary

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

Financial Summary

The total project costs of \$3,489,208 will be funded with \$1,056,113.00 of members' equity, a \$2,000,000 construction loan, for a 5-year term, at an interest rate of 8%, and a Landlord Construction Allowance of \$433,095.

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,526,794	\$8,264,167
Expenses	<u>\$6,960,609</u>	<u>\$7,328,736</u>
Net Income	\$566,185	\$935,431

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **October 1, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **July 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the entities will operate at two separate times; there will be no overlap in hours; the clinical space must be used exclusively for the approved purpose; medical records will be separately maintained for each entity and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director who has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date
June 18, 2025

Need Analysis

Program Description

Bronx Endovascular Center LLC (the Center) is requesting to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a single-specialty freestanding ambulatory surgical center (FASC) specializing in vascular surgery at 1733 Eastchester Road, Suite 2, Bronx (Bronx County), New York 10461. This project will renovate and convert an existing private office-based surgical practice into a single-specialty (vascular surgery) Article 28 FASC, which will result in operational efficiencies, an improved patient experience, and high-quality surgical care. Furthermore, this project will bring cases to the Center from an existing Article 28 FASC in New York County (NY Endovascular Center, PFI No. 15335), for patients living in Bronx County, thus providing more convenient access to care, closer to home.

In addition, two (2) other non-member physicians (Joseph Shams, M.D., and Noam Spinowitz, M.D.) have committed to perform cases at the proposed Center, which are currently being performed at NY Endovascular Center, an existing FASC in New York County. There will be no cases that come from local hospitals. Approximately 83% of the cases (Dr. Hamadeh's cases) to be performed at this proposed FASC will come from the existing private office-based surgery practice at 1733 Eastchester Road, Suite 2, Bronx (Bronx County), New 3 York 10461; and approximately 17% of the cases (Drs. Shams' and Spinowitz's cases) to be performed at this proposed FASC will come from NY Endovascular Center. The Center will have two (2) operating rooms.

Background & Analysis

The relevant service area consists of Bronx County. The population of Bronx County is estimated at 1,419,250 based on 2023 American Community Survey data and is projected to increase to 1,604,168 by 2030 per projection data from the Cornell Program on Applied Demographics (PAD), an increase of 13.0%. Demographics for the service area are noted below, including a comparison with New York State:

Demographics	Bronx County	New York State
Total Population – 2023 Estimate	1,419,250	19,872,319
White (non-Hispanic)	8.8%	53.4%
Hispanic or Latino (of any race)	54.9%	19.6%
Black or African American (non-Hispanic)	29.1%	13.6%
Asian (non-Hispanic)	4.0%	8.8%
Other (non-Hispanic)	3.2%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

The aged 65 and over population and the minority population are two groups most in need of end-stage renal dialysis services. The population aged 65 and over was 13.9% of the total population in Bronx County in 2023. According to the applicant, this cohort is more likely to utilize the Center's service. By 2030, Cornell PAD estimates the 65 and over cohort will be 16.4% of the total population, an increase of 2.5%. The non-white population percentage was 91.2%, which is significantly higher than the New York State percentage of 46.6%.

In 2023, 92.7% of the population of Bronx County had health coverage as follows:

Employer Plans	29.5%
Medicaid	43.4%
Medicare	7.06%
Non-Group Plans	12.3%
Military or VA	0.392%

Source: Data USA

The table below shows the number of patient visits for relevant facilities providing ambulatory surgery services in Bronx County for 2021 through 2023.

Ambulatory Surgery within a 3-mile Radius of Proposed Center				
Facility Name	Type	Patient Visits		
		2021	2022	2023
Montefiore Med Center – Jack D Weiler Hosp of A Einstein College Div	Hospital	5,169	5,510	6,471
Montefiore Hutchinson Campus	Hospital Extension Clinic	18,918	19,119	19,543
Jacobi Medical Center	Hospital	6,600	6,719	7,484
Avicenna ASC ¹	ASC	4,407	3,072	1,671
SBH Health System	Hospital	4,366	5,697	5,540
Total Visits		39,460	40,117	40,709

Source: HFIS & SPARCS

¹Unable to verify if vascular access surgeries are offered.

All the facilities listed above provide multi-specialty services. According to SPARCS, Montefiore Medical Center – Montefiore Westchester Square, located about 0.9 miles from the Center, closed its ambulatory surgery services during the COVID-19 pandemic and has not reopened that service since then.

The number of projected procedures is 2,575 in Year One and 2,881 procedures in Year Three, with Medicaid at approximately 15% and Charity Care at 2%. These projections are based on the current caseload of the physicians who will be practicing at the Center. According to the applicant, approximately 83% of the cases will come from the existing private office-based surgery practice at 1733 Eastchester Road, Suite 2, Bronx (Bronx County), New York 10461; and about 17% of the cases (two non-physician members) will come from an existing ASC, NY Endovascular Center in New York County, approximately 7.8 miles away and 23-minute drive from the Center. There will be no cases that come from the local hospitals. The physicians will continue to be on call and see patients at the hospitals with which they are affiliated.

The table below shows the projected payor source utilization for Year One and Year Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	150	5.8%	170	5.9%
Commercial MC	175	6.8%	199	6.9%
Medicare FFS	510	19.8%	571	19.8%
Medicare MC	1,283	49.8%	1,435	49.8%
Medicaid FFS	74	2.9%	81	2.8%
Medicaid MC	306	11.9%	340	11.8%
Private Pay	25	1.0%	27	1.0%
Charity Care	52	2.0%	58	2.0%

Source: Applicant

The Center expects to contract with the following Medicaid Managed Care plans: Affinity, Amerigroup, Aetna, Better Health, Anthem BCBS Medicaid, Emblem, HealthFirst, Metro Plus, Molina, MVP, UHC, and Wellcare. The Center will work collaboratively with local Federally Qualified Health Centers (FQHCs) and others to provide services to the underinsured in their service area.

The Center will develop a financial assistance policy with a sliding fee scale to be utilized when the Center is operational. The Center will be open Monday through Friday, 7:30 AM to 3:30 PM. The hours and days of operation may be expanded to accommodate patients' demand and convenience. In addition, if a patient requires assistance during hours when the Center is not in operation, the patient will be able to call an on-call service, available 24 hours per day, seven days a week. The Center also has an executed transfer and affiliation agreement with Montefiore Medical Center (Einstein Campus), approximately 0.3 miles away and a 3-minute drive from the Center.

Conclusion

Approval of this project will provide increased and improved access to vascular access surgery services in an outpatient setting for the residents of Bronx County.

Program Analysis

Project Proposal

Proposed Operator	Bronx Endovascular Center LLC
Site Address	1733 Eastchester Road, Suite 2, Bronx (Bronx County), New York 10461
Specialties	Ambulatory Surgery- Single Specialty (Vascular Surgery)
Hours of Operation	Monday through Friday, 7:30 a.m. to 3:30 p.m. As the Center matures, it is expected that an expanded operating schedule will be maintained to accommodate the needs of both patients and physicians. Weekend and/or evening procedures will be made available, if needed, to accommodate patient scheduling issues.
Operating Rooms	2
Staffing (1 st Year / 3 rd Year)	19.0 FTEs / 19.0 FTEs
Medical Director(s)	Zaher Hamadeh, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Montefiore Medical Center (Einstein Campus) 0.6 miles / 4 minutes

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

Position	Year One	Year Three
Management and Supervision	3.0	3.0
Technician and Specialist	4.0	4.0
Registered Nurses	5.0	5.0
Aides, Orderlies & Attendants	1.0	1.0
Physicians	2.0	2.0
Infection Control, Environment and Food Service	1.0	1.0
Clerical and Other Administrative	3.0	3.0
Totals	19.0	19.0

The Center's members are Raymond D. Figueroa (50% membership interest) and Zaher Hamadeh, M.D. (50% membership interest). This project is a partnership between Dr. Hamadeh, the Medical Director of Advanced Access Medical Care (AAMC), an existing private physician practice specializing in dialysis access care, and Raymond D. Figueroa, Founder, Chief Executive Officer and Managing Member of American Endovascular & Amputation Prevention, LLC, an existing company which provides administrative and business support services to medical professionals who provide care in the fields of Amputation Prevention and Endovascular and Interventional Radiology. This project is bringing together a local, established vascular surgeon and a seasoned professional and industry expert into the operation of an Article 28 FASC specializing in vascular and dialysis access care.

Please note, this project effectively replaces Project No. 222181-B (Bronx Vascular Surgical Center - Establish and construct a single-specialty FASC in Bronx County specializing in vascular surgery), which was withdrawn from consideration. Dr. Hamadeh was an approved member of that project, which proposed the same scope of services.

Membership Structure:

Member	Ownership
Raymond D. Figueroa	50%
Zaher Hamadeh M.D.	50%

Character and Competence:

Raymond D. Figueroa is the Founder and Chief Executive Officer and Managing Member of American Endovascular & Amputation Prevention, LLC since 2018. Raymond Figueroa has had ownership in Figueroa Equities, LLC since 2003 and has worked at St. Michael's Health Care & American Chronic Care, LLC since 2016, and has also owned and operated Pristine Rentals and Renovation, LLC since 2006. Prior to this, Raymond had ownership at Dental Spa, LLC from 2008 to 2020, Blue Cloud Pediatric Surgery Centers, LLC, San Antonio Children's Surgical LLC, and DFW Children's Surgery Center from 2016 to 2022, Tampa Children's Surgery Center and Orlando Children's Surgery Center from 2018 to 2022, Houston Children's Dental Center from 2021 to 2022, and KC Children's Surgery Center and Cleveland Children's Surgery Center from 2019 to 2022.

Raymond Figueroa graduated from the Naval School of Health Sciences in 1989 as a Clinical Nuclear Medicine Technologist and with a Bachelor of Science in Advanced Science and Technology from Thomas Edison State College in 2009.

Zaher Hamadeh, M.D., will serve as the medical director. Dr. Hamadeh has been the medical director and Interventional and Diagnostic Nephrologist at Advanced Access Medical Care since 2014, as well as a partner and Diagnostic Nephrologist at Kidney Medical Associates since 2016. Dr. Hamadeh graduated with a Doctor of Medicine from the University of Damascus in 2001 and from 2002-2003 was a Research Fellow in the Department of Radiology at Harvard Medical School. Dr. Hamadeh completed an Internal Medicine Internship at the University of Texas Medical Branch in 2004 and a Residency in Internal Medicine in 2006. In 2011, Dr. Hamadeh completed a Nephrology Fellowship at Jacobi Medical Center. Dr. Hamadeh is board-certified in Internal Medicine and Nephrology.

Dr. Hamadeh disclosed the following lawsuit:

TAYLOR, CHARLES vs. HAMADEH, M.D., ZAHER/Bronx Supreme Court/23176/2018E/Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case has been settled.

The following are the proposed FTEs for years one and three:

Integration with Community Resources

The applicant is committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics or qualifications. The applicant projects that 2% of the cases the Center will perform will be for charity care recipients, and approximately 15% of the cases the Center will perform will be for Medicaid recipients (fee-for-service and managed care plans). The Center expects to contract with the following Medicaid managed care insurers: Affinity, Amerigroup, Aetna, Better Health, Anthem BCBS Medicaid, Emblem, HealthFirst, Metro Plus, Molina, MVP, UHC, and WellCare. The Center will reach out on a regular basis to local hospitals, Federally Qualified Health Centers (FQHC) (e.g., Comprehensive Family Health Center, Institute for Family Health and Sun River Health), local family shelters and homeless shelters in an effort to bring additional Charity Care and Medicaid patient referrals to the Center. The Center will encourage primary care providers to send their uninsured and underinsured patients to the proposed facility for care. This will be achieved by introducing the Center and its services to these organizations and encouraging them to tour the Center, meet its staff and providers, and by staying in regular contact with these facilities.

The proposed Center, through its architectural design, will also address the needs of handicapped persons, including persons with visual impairments (signs and forms in large print), hearing impairments, and other physical impairments (handicapped accessible entrances and toilets).

In keeping with the Department's health home and managed care goals for Bronx County and elsewhere, the Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including the broad array of outpatient primary care services offered by Montefiore Medical Center, which will be the Center's back-up hospital for the provision of backup and emergency services. Prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

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

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

Conclusion

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

Financial Analysis

Total Project Costs and Financing

The Total project costs for construction, fit out, and acquisition of movable equipment are estimated at \$3,384,408.00 and broken down as follows:

Renovation and development	\$2,000,000
Design and Contingency	\$200,000
Construction Contingency	\$200,000
Architect/Engineering Fees	\$170,000
Construction Management Fees	\$50,000
Other Fees	\$20,000
Movable Equipment	\$650,000
Financing Costs	\$20,000
Interim Interest Expense	\$53,333
COMN Application Fee	\$2,000
CON Processing Fee	<u>\$19,075</u>
Total Project Cost	\$3,384,408

The applicants' plan for financing is as follows:

Equity (Applicant Members)	\$1,056,113
Landlord-Tenant Improvement Allowance	\$433,095
Construction Loan (5-year term, 8% interest, 25-year amortization)	<u>\$2,000,000</u>
Total Project Financing	\$3,384,408

Figueroa Holdings, LLC has provided a loan commitment letter for the bank loan at the above-stated terms. Figueroa Holdings, LLC is fully owned by one of the proposed members of Bronx Endo Raymond Figueroa. BFA attachment A, Net Worth Statement of the Proposed Members of Bronx Endovascular Center, LLC, indicates sufficient resources to meet the equity requirements of this application.

Operating Budget

The applicant has submitted their Year One and Year Three operating budget, in 2025 dollars, summarized below.

Payor Source	Year One		Year Three	
	Per Procedure	Total Revenue	Per Procedure	Total Revenue
Revenue:				
Commercial FFS	\$4,193	\$ 628,890	\$4,062	\$690,599
Commercial MC	\$3,812	\$667,100	\$3,681	\$732,453
Medicare FFS	\$3,364	\$1,715,400	\$3,299	\$1,883,452
Medicare MC	\$2,971	\$3,812,000	\$2,917	\$4,185,448
Medicaid FFS	\$773	\$57,180	\$775	\$62,782
Medicaid MC	\$1,869	\$571,800	\$1,847	\$627,817
Private Pay	\$2,973	<u>\$74,334</u>	\$3,023	<u>\$81,616</u>
Total Revenues		\$7,526,794		\$8,264,167
Expenses:				
Operating Expense	\$2,444	\$6,292,587	\$2,327	\$6,704,039
Capital expense	<u>\$259</u>	<u>\$668,022</u>	<u>\$217</u>	<u>\$624,697</u>
Total Expense:	\$2,703	\$6,960,609	\$2,544	\$7,328,736
Net Income		\$566,185		\$935,431
Total Procedures		2,575		2,881
Cost Per Procedure		\$2,703		\$2,544

Utilization for payor sources is anticipated as follows:

<u>Payor source</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	5.83%	5.90%
Commercial MC	6.80%	6.91%
Medicare FFS	19.81%	19.82%
Medicare MC	49.83%	49.81%
Medicaid FFS	2.87%	2.81%
Medicaid MC	11.88%	11.80%
Private Pay	.97%	.94%
Charity Care	2.01%	2.01%
	100.00%	100.00%

The following assumptions were considered for the Operating Budget:

- Volume is based on the historical experience of the three (3) proposed physicians of Bronx Endovascular Center, LLC.
- Medicare revenues are based on the Medicare fee schedule. Commercial revenues are based on the physicians' past commercial payor rate experience for the types of cases they will perform at the Center. Medicaid revenues are based on the recent APG rates listed on the Department of Health website.
- Expense and utilization assumptions reflect the physicians' and members' experience in operating a private practice.

Lease Rental Agreement

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

Date:	Tuesday, February 18, 2025
Premises:	1733 Eastchester Road Suite 2, Bronx, New York 10461
Landlords: Collectively	1733 Eastchester, LLC & Eastchester Road Realty, LLC
Tenant:	Bronx Endovascular Center, LLC
Term:	186 Months, 15 Years, and 6 Months
Rent:	Year 1 \$233,205 annual or \$19,433.75 monthly, Year 2 \$253,194 or \$21,099.50 monthly, Year 3 260,789.82 annually or 21,732.49 monthly, Year 4 \$269,265.49 annually or \$22,438.79 monthly, Year 5 \$278,016.62 annually or \$23,168.05 monthly, Year 6 \$287,052.16 annually or \$23,921.01 monthly, Year 7 \$296,381.35 annually or \$24,698.45 monthly, Year 8 \$306,013.75 annually or \$25,501.15 monthly, Year 9 \$315,959.19 annually or \$26,329.93 monthly, Year 10 \$326,227.87 annually or \$27,185.66 monthly, Year 11 \$336,830.27 annually or \$28,069.19 monthly, Year 12 \$347,777.26 annually or \$28,981.44 monthly, Year 13 \$359,080.02 annually or \$29,923.33 monthly, Year 14 \$370,750.12 annually or \$30,895.84 monthly, Year 15 \$382,799.50 annually or \$31,899.96 and Year 16 \$395,240.48 annually or \$32,936.71 monthly.
Provisions:	Triple Net

Capability and Feasibility

Total project cost of \$3,489,208 will be funded with a \$2,000,000 construction loan between Figueroa Holdings, LLC (an entity owned by Raymond D. Figueroa, managing member of Bronx Endovascular Center, LLC) and the applicant, a \$433,095 Landlord Construction Allowance, and \$1,056,113 in proposed members equity.

The working capital requirement for this project is estimated at \$1,221,456, which is the equivalent to two months of projected third-year expenses. Working Capital will be funded with a \$500,000, 5-year loan at 8% interest from Figueroa Holdings, LLC and a \$721,456 equity contribution by the applicant's members. BFA Attachment A shows the applicant has sufficient liquid assets to cover both the equity needed for the project and the working capital.

BFA Attachment B, Pro Forma Balance Sheet of Bronx Endovascular Center, LLC, shows operations \$2,643,759 in member equity as of the first day of operations.

The applicant projects a net income of \$566,185 and \$935,431 in Year One and Year Three, respectively. Revenues are based on the current Medicare fee Schedule, the Medicaid APG rates, and the Commercial rates experienced by the physicians in their private medical practice. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of the Proposed Members of Bronx Endovascular Center, LLC
BFA Attachment B	Pro Forma Balance Sheet of Bronx Endovascular Center, LLC
BFA Attachment C	Organizational Chart of Bronx Endovascular Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a Single-Specialty Ambulatory Surgery Center (ASC) for vascular surgery at 1733 Eastchester Road, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251101 B

FACILITY/APPLICANT:

Bronx Endovascular Center LLC

APPROVAL CONTINGENT UPON:

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

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

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **October 1, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **July 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the entities will operate at two separate times; there will be no overlap in hours; the clinical space must be used exclusively for the approved purpose; medical records will be separately maintained for each entity and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director who has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Department of Health

Public Health and Health Planning Council

Project # 251137-B Wellness Way ASC, LLC

Program: Diagnostic and Treatment Center **County:** Albany
Purpose: Establishment and Construction **Acknowledged:** March 28, 2025

Executive Summary

Description

Wellness Way Holdings, LLC, (the Center), an existing limited liability company, seeks approval to establish and construct a multi-specialty, freestanding ambulatory surgical center (FASC) in leased space at 4 Wellness Way, Suite 100, Latham, New York (Albany County). The Center will specialize in urologic surgery, plastic surgery, general surgery, breast surgery, and obstetrics & gynecology (non-abortion). The facility plans to have three (3) operating rooms and one (1) procedure room. The Center will be known as Wellness Way ASC, LLC. The proposed site will be constructed by Columbia Development, the unrelated landlord.

The proposed members of the Operations are as follows:

Wellness Way ASC, LLC	
Proposed Members	%
James M. Belarmino, M.D.	12%
John D. Bennett, M.D.	2%
Terence J. Clarke, M.D.	12%
Kelly Anne Dennin, M.D.	12%
Efrossini Kolios, M.D.	12%
Mathew D. McDonald, D.O.	12%
Vishnudas P. Pai, M.D.	12%
Shirish J. Parikh, M.D.	2%
Danielle M. Rooney, M.D.	12%
Mathew T. Stringer, D.O.	12%
Total	100%

James M. Belarmino, M.D., will serve as the Medical Director. Albany Medical Center (AMC) has sent a letter expressing interest to provide transfer and affiliation services as backup to the Center, 13.6 miles/26 minutes away. All members are currently board certified, practicing physicians and will practice at the Center.

OPCHSM Recommendation

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

Need Summary

The applicant projects 4,540 procedures in Year One and 5,006 in Year Three, with Medicaid at 8% and Charity Care at 2% by Year Three.

Program Summary

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

Financial Summary

Total project cost of \$5,095,960 will be funded with a bank loan of \$4,500,000 over a 7-year term at a fixed rate of 6.55% and members' equity of \$596,960.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,497,849	\$10,439,138
Expenses	<u>\$9,113,911</u>	<u>\$9,687,304</u>
Net Income / (Loss)	\$383,938	\$751,834

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **October 1, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **July 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: [http: www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf](http://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf)
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date
June 18, 2025

Need Analysis

Project Description

Wellness Way Holdings, LLC is seeking approval to establish a multi-specialty, freestanding ambulatory surgery center (FASC) at 4 Wellness Way, Latham, New York 12110 in Albany County. The Center will specialize in urologic surgery, plastic surgery, general (including bariatric) surgery, and breast surgical procedures, as well as obstetrics & gynecology (non-abortion). Breast Surgery will offer care for breast cancer patients, high-risk surveillance, and benign breast disease. The facility plans to have three (3) operating rooms and one (1) procedure room. Upon approval, the Center will be known as Wellness Way ASC, LLC.

Background and Analysis

The primary service area is Albany County, which has a population projected to increase to 322,394 by 2030 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Albany County	New York State
Total Population	315,374	19,872,319
Hispanic or Latino (of any race)	7.0%	19.6%
White (non-Hispanic)	69.0%	53.4%
Black or African American (non-Hispanic)	11.4%	13.6%
Asian(non-Hispanic)	7.2%	8.8%
Other (non-Hispanic)	5.4%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)

In 2023, 97% of the population of Albany County had health coverage as follows:

Employer Plans	54.7%
Medicaid	17.0%
Medicare	13.0%
Non-Group Plans	11.5%
Military or VA	0.794%

Source: Data USA

Ambulatory Surgery within a 10-Mile Radius of Proposed Center

Facility Name	Type	Patient Visits		
		2021	2022	2023
Albany Medical Center Hospital	Hospital	21,863	22,201	25,058
Albany Medical Center – South Clinical Campus	Hospital	7,001	7,758	8,410
Ellis Hospital	Hospital	5,367	5,437	6,603
New England Laser & Cosmetic Surgery Center	ASC	78	138	551
Samaritan Hospital (Rensselaer County)	Hospital	13,796	14,411	14,800
St. Peter's Hospital	Hospital	16,304	16,75	19,206
St. Peter's Surgery And Endoscopy Center	ASC	18,750	19,792	19,280
Total Visits		83,159	69,737	93,908

Source: HFIS and SPARCS

All of the facilities listed above provide multi-specialty ambulatory surgical services.

Per the applicant, for over 40 years, Community Care Physicians, P.C. (CCP) has grown into the largest independent multispecialty group practice in the Capital District with over 420 physicians and advanced practice providers. Four (4) of the nine (9) physicians who will practice at the proposed ASC are presently affiliated with CCP. The vast majority of all proposed surgical procedures are expected to originate from regional hospitals, primarily from Ellis Hospital in Schenectady and St. Peter's Hospital in Albany, with a small percentage of cases migrating from Samaritan Hospital in Troy and Southwestern

Vermont Medical Center in Bennington, Vermont. Additionally, one of the participating physicians' projected procedures will migrate from Saratoga-Schenectady Endoscopy Center (a FASC) in Burnt Hills, while another physician intends to perform his colonoscopies, currently performed in a private practice at Wellness Way, at the proposed Center. Per the applicant, this represents 634 procedures or 14% of the total Year 1 volume for the Center. The participating physicians will continue to perform the more complex procedures in a hospital environment.

The Center will occupy space in a to-be-constructed building. The applicant will enter into a transfer and affiliation agreement with Albany Medical Center to serve as a backup hospital for inpatient admissions.

The number of projected procedures is 4,540 in Year One and 5,006 in Year Three, with Medicaid at 8% and Charity Care at 2%. These projections are based on caseloads that participating surgeons have committed to bringing to the Center.

The table below shows the applicant's projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	1,453	32.0%	1,602	32.0%
Commercial MC	1,271	28.0%	1,402	28.0%
Medicare MC	1,044	23.0%	1,151	23.0%
Medicare FFS	227	5.0%	250	5.0%
Medicaid MC	363	8.0%	401	8.0%
Private Pay	91	2.0%	100	2.0%
Charity Care	91	2.0%	100	2.0%

The center initially plans to obtain contracts with the following Medicaid Managed Care Plans: Capital District Physician's Health Plan, MVP Health Plan, Fidelis Care, and United Healthcare. The center will work collaboratively with Federally Qualified Health Centers such as Whitney M. Young, Jr. Health Center to provide services to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The hours of operation will be Monday through Friday from 7:00 a.m. to 5:00 p.m. As the Center matures, it is expected that an expanded operating schedule will be maintained to accommodate the needs of both patients and physicians. Weekend and/or evening procedures will be made available, if needed, to accommodate patient scheduling issues.

Conclusion

Approval of this project will enable the continued provision of needed services in the community in a more cost-effective manner and will provide a single center of excellence for surgical services within the regulatory environment of Article 28 health care facilities, ensuring safe health care delivery for the residents of Albany County.

Program Analysis

Project Proposal

Proposed Operator	Wellness Way ASC, LLC
Site Address	4 Wellness Way, Suite 100, Latham, NY 12110
Surgical Specialties	Ambulatory Surgery - Multi Specialty (urologic surgery, plastic surgery, general surgery, breast surgery, and obstetrics and gynecology, bariatric surgery)
Procedure Rooms	1
Operating Rooms	3
Hours of Operation	Monday through Friday from 7:00am to 5:00pm. As the Center matures, it is expected that an expanded operating schedule will be maintained to accommodate the needs of both patients and physicians. The applicant anticipates that weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.
Staffing (1st Year / 3rd Year)	22.25 FTEs / 24.75 FTEs
Medical Director(s)	James M. Belarmino, MD, MC, USNR
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by: Albany Medical Center 13.6 Miles / 26 minutes

The following tables show the projected FTEs in Year One and Year Three following completion of this project:

Staffing	Year One	Year Three
Management and Supervision	1.25	1.25
Technician and Specialist	5.0	6.0
Registered Nurses	9.0	10.0
Aides, Orderlies & Attendants	1.0	1.50
Clerical and Other Administrative	6.0	6.0
Total	22.25	24.75

Proposed Ownership

Member Name	Proposed Interest
James M. Belarmino, MD, MC, USNR	12%
John D. Bennett, MD, FACC, FACP	2%
Terence J. Clarke, MD, FASMBS, ABOM	12%
Kelly Anne Dennin, MD, FACS	12%
Efrossini Kolios, MD	12%
Matthew D. McDonald, DO, FASC, FASMBS	12%
Vishnudas P. Pai, MD, MS, ABOM, FASMBS	12%
Shirish J. Parikh, MD, MBA, FACR	2%
Danielle M. Rooney, MD	12%
Matthew T. Stringer, DO	12%
TOTAL	100%

Character and Competence

James M. Belarmino, MD, MC, USNR will be the medical director of the facility and has over 17 years of surgical and clinical experience in urology, practicing for Community Care Physicians, P.C. (CCP) for the past six years. Prior to this, Dr. Belarmino worked at Locums with CompHealth from 2017 to 2018 and for Watson Clinic, Department of Urology from 2011-2017. Dr. Belarmino graduated from Boston College with a bachelor's degree in 1995 and from Loyola University-Chicago with a Doctor of Medicine in 1999. Dr. Belarmino is board-certified in Urology.

John D. Bennett, MD, FACC, FACP is the president and CEO of Capital District Physicians' Health Plan, Inc. (CDPHP). Dr. Bennett has held the position since 2008 after serving more than 10 years as chair, vice chair, and board member for CDPHP. Dr. Bennett graduated from Rensselaer Polytechnic Institute with a bachelor's degree in 1974 and from SUNY Downstate Medical Center with a Doctor of Medicine in 1978. Bennett completed an internship and residency in internal medicine and a fellowship in cardiovascular disease at Albany Medical Center. Dr. Bennett is board-certified by the National Board of Medical Examiners and the American Board of Internal Medicine, with subspecialties in internal medicine and cardiology.

Terence J. Clarke, MD, FASMBS, ABOM has worked as a surgeon and endoscopist for Capital Cardiology Associates for the past two years. Prior to this, Dr. Clarke developed the bariatric center at Ellis Medicine and served as the Medical Director and Division Chief of Bariatric and Metabolic Surgery. Dr. Clarke is an experienced general and bariatric surgeon who has been providing care for the past 20 years. Dr. Clarke graduated from City University of New York at Queens College with a bachelor's degree in 1993 and from Ross University School of Medicine with a Doctor of Medicine in 1997. Dr. Clarke is board-certified in Surgery.

Kelly Anne Dennin, MD, FACS has been a General Surgeon for Albany Surgery Associates, PC since 1995. Dr. Dennin graduated from Union College with a bachelor's degree in 1982 and from RPI with a master's degree in 1985. In 1989 Dr. Dennin graduated from Albany Medical College with a Doctor of Medicine. Dr. Dennin is board-certified in Surgery.

The following lawsuits name Dr. Dennin:

Chorost vs. Dennin, et al./ Albany Supreme Court/ 0906097/2019/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was settled on 03/19/2025.

Shea, Kathleen, Individually and as Administratrix vs. St. Peter's Health Partners/ Rensselaer Supreme Court/ EF2019-262501/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was settled on 10/03/2024.

Efrossini Kolios, MD has been a Urologist at Niskayuna Urology since 2021. Prior to this, Dr. Kolios was a Urologist for Albany Urologic Oncology from 2012-2021 and Capital Region Urology from 2010-2012. Dr. Kolios graduated from Columbia University with a bachelor's degree in 1996 and from MCP Hahnemann University with a master's degree in 1999. In 2005 Dr. Kolios graduated from Albany Medical College with a Doctor of Medicine. Dr. Kolios is board-certified in Urology.

Matthew D. McDonald, DO, FASC, FASMBS has been a partner at Capital Bariatrics since 2024 and was previously the Director of Capital Bariatrics from 2021-2024. Prior to this, Dr. McDonald was the Director of Bariatric and Minimally Invasive Surgery at Samaritan Hospital Bariatric and Metabolic Care from 2016 to 2021 and was a Staff Surgeon for the VA Medical Center from 2016 to 2020. Dr. McDonald also worked as an Assistant Professor of Surgery for SUNY Upstate Medical Center from 2012 to 2016. Dr. McDonald graduated from SUNY Potsdam with a bachelor's degree in 1997 and from New York College of Osteopathic Medicine with a Doctor of Osteopathic Medicine in 2001. Dr. McDonald is board-certified in Surgery.

Vishnudas P. Pai, MD, MS, ABOM, FASMBS has been practicing General and Bariatric Surgery in the Capital District area for the past 15 years, most recently working as a Bariatric Surgeon for Capital Cardiology Associates since 2023 and previously working as a Bariatric and General Surgeon for Ellis Hospital from 2007 to 2022. Dr. Pai graduated from Kasturba Medical College with a Bachelor of Medicine, Bachelor of Surgery in 1993 and from Trivandrum Medical College with a master's degree in 1998. Dr. Pai is board-certified in Surgery.

Shirish J. Parikh, MD, MBA, FACR is the founder, chairman, and chief executive officer of Community Care Physicians, P.C. (CCP) for over 40 years. Dr. Parikh graduated from Seth G.S. Medical College with a Bachelor of Medicine, Bachelor of Surgery in 1973 and a Diploma in Medical Radio Diagnosis in 1975. Dr. Parikh graduated from Rensselaer Polytechnic University with a Master of Business Administration in 1997. Dr. Parikh is board-certified in Diagnostic Radiology.

Danielle M. Rooney, MD is an experienced Obstetrician and Gynecologist who has worked for CCP for the past 12 years. Dr. Rooney has also worked as a physician covering Obstetrics and Gynecology services on a per-diem basis for groups at St. Mary's Hospital and Bellevue Women's Center since 2017. Dr. Rooney graduated from the University of Vermont with a bachelor's degree in 2003 and from Albany Medical College with a Doctor of Medicine in 2009. Dr. Rooney is board-certified in Obstetrics and Gynecology.

The following case names Dr. Rooney:

Crawford vs. Rooney M.D./ Albany Supreme Court/ 0903292/2021/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case involved cord prolapse during labor, which was managed by another provider. The case is still pending.

Matthew T. Stringer, DO has worked as a Staff Urologist at Saratoga Hospital Group since 2022. Prior to this, Dr. Stringer worked as the Chief of Urology at Eglin Air Force Base Hospital from 2016 to 2021 and as a Urologist at HCA Florida Fort Walton-Destin Hospital from 2016 to 2021. Dr. Stringer graduated from Hamilton College with a bachelor's degree in 2003 and from Nova Southeastern College of Osteopathic Medicine with a Doctor of Osteopathic Medicine in 2010. Dr. Stringer is board-certified in Urology.

Integration with Community Resources

The applicant is dedicated to providing high-quality, cost-effective, and comprehensive outpatient surgical procedures. It will serve as a community resource, dedicated to all patients and their families, and is committed to providing compassionate, state-of-the-art care while reducing health system costs. The members of the Center are committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics. The applicant proposes to provide its fair share of charity care in addition to the significant funds that will flow from the Center to the State's bad debt and charity care pools. As evidence of this commitment, the operating budget projects that 2.0% of procedures will be for charity care and 2.0% for discounted self-pay. In addition, the operating budget also includes 8.0% Medicaid, demonstrating the Center's expected outreach to this traditionally underserved population.

The proposed Center, through its architectural design, will also address the needs of handicapped persons, including persons with visual impairments (signs and forms in large print), hearing impairments (TTY, and sign-language interpreter service, if available in the local area) and other physical impairments (handicapped accessible entrances and toilets). Finally, the proposed Center will enhance access through its location, which is easily reached by major roads and public transportation (including I-87; The Adirondack Northway (Exit No. 7), New York State Route 7, U.S. Route 9, as well as the Capital District Transportation Authority Bus System (Bus #182 makes a stop at Wellness Way, Latham).

The applicant is also committed to the development of a formal outreach program directed at members of the local community, including local physicians. The purpose of this program will be to inform these groups of the benefits derived from and the latest advances made in outpatient surgical treatments available at the Center. To this end, the Center will reach out to the underserved population within Albany County in order to improve access to surgical care provided at the Center.

In keeping with the Department's health home and managed care goals for Albany County and elsewhere, the Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including the providers on the Wellness Way campus, with whom the Center expects to develop a seamless patient care continuum. Through this program, the Center's patients will be better able to make informed choices regarding preventive medicine, to

understand their personal healthcare options going forward, and to hopefully avoid unnecessary hospitalization and emergency room visits. Prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

The Center will seek accreditation from the Accreditation Association for Ambulatory Health Care (AAAHC) or similar New York State-approved accreditation agency within two (2) years of becoming operational.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for this application is \$17,179,546, which is a combination of landlord and tenant (applicant) costs. Reimbursement is limited to \$5,095,960, the applicant's portion of the construction costs.

	<u>Wellness Way ASC, LLC</u>	<u>Landlord</u>	<u>Total</u>
Land Acquisition		\$913,126	\$913,126
New Constructions		8,010,895	8,010,895
Temporary Utilities		586,720	586,720
Asbestos Abatement or Removal		19,210	19,210
Design Contingency		801,090	801,090
Construction Contingency		400,545	400,545
Architect/Engineering Fees		752,000	752,000
Construction Manager Fees		600,000	600,000
Moveable Equipment	\$5,000,000		5,000,000
Application Fees	2,000		2,000
Additional Processing Fee*	<u>93,960</u>		<u>93,960</u>
Total	\$5,095,960	\$12,083,586	\$17,179,546

*The additional processing fee for this application is the total of the landlord costs (related to this project) and tenant cost.

The financing for this project will be as follows:

Members' Equity (10.5%)	\$595,960
Bank loan (6.55% interest, 7-year term)	<u>4,500,000</u>
Total	\$5,095,960

Berkshire Bank has provided a letter of interest for the bank loan. BFA Attachment A shows sufficient member equity requirement and a bank loan letter of interest to meet the project cost.

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for Year One and Year Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
Revenues:	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Commercial FFS	\$2,694.51	\$3,915,123	\$2,689.29	\$4,308,242
Commercial MC	\$2,527.17	3212037	\$2,520.76	3534105
Medicare MC	\$1,681.39	1,755,374	\$1,681.45	1,935,348
Medicare FFS	\$1,681.06	381,601	\$1,682.92	420,731
Medicaid MC	\$1,093.72	397,022	\$1,047.64	420,102
Private Pay	\$335.45	30,526	\$336.54	33,654
Bad Debt Expense		<u>-\$193,834</u>		<u>-\$213,044</u>
Total Revenues	\$4,792	\$9,497,849	\$4,749	\$10,439,138
Expenses:				
Operating	\$1,541.84	\$6,995,415	\$1,532.14	\$7,669,915
Capital	<u>\$467.63</u>	<u>2,118,496</u>	<u>\$403.99</u>	<u>2,017,389</u>
Total	\$2,007.47	\$9,113,911	\$1,935.14	\$9,687,304
Net Income / (Loss)		<u>\$383,938</u>		<u>\$751,834</u>
Cost per Proc.		\$2,007.47		\$1,935.14
Total Procedures		4,540		5,006

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

	<u>Year One</u>		<u>Year Three</u>	
Commercial FFS	1,453	32.0%	1,602	32.0%
Commercial MC	1,271	28.0%	1,402	28.0%
Medicare MC	1,044	23.0%	1,151	23.0%
Medicare FFS	227	5.0%	250	5.0%
Medicaid MC	363	8.0%	401	8.0%
Private Pay	91	2.0%	100	2.0%
<u>Charity Care</u>	<u>91</u>	<u>2.0%</u>	<u>100</u>	<u>2.0%</u>
<u>Total</u>	4,540	100.0%	5,006	100.0%

The following is noted with respect to the submitted budget:

- The number and mix of staff were determined by the historical experience of the proposed physician members in providing ambulatory surgical services, and experience of other similar FASCs in the Capital Region. Staffing patterns will be based upon demand and may be adjusted as needed.
- Revenues and operating expenses are based on the experience of the proposed physician members in providing procedures in their current locations. The Center initially plans to obtain contracts with the following Medicaid Managed Care Plans: Capital District Physician's Health Plan, MVP Health Plan, Fidelis Care, and United Healthcare. The Center will work collaboratively with Federally Qualified Health Centers such as Whitney M. Young, Jr. Health Center to provide services to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.
- The payor mix was determined based on the demographics of the service area and with input from the members of the applicants and the physician volume letter that estimates CPT-4 number of procedures.
- Wellness Way ASC LLC submitted a Medicaid & Charity Care Utilization Plan to allow physicians who become credentialed to waive fees for patients who qualify for this benefit.
- Utilization is based on the current caseload of the physician's letter estimating commitment to perform cases at the Center.
- The Center has identified nine (9) physicians who are interested in performing procedures at the proposed Center. The total annual projected number of cases in the first year is 3,663 (representing 4,540 procedures). This projection is based upon the participating surgeons' current case load that is appropriate for this setting.

Ground Lease Agreement

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

Premises:	4 Wellness Way, Town of Colonie (Albany County)
Square Footage:	Approximately 36,542 Square Feet or 84 acres.
Landlord:	4 and 6 Autopark Property LLC and Autopark Property LLC and Autopark TIC 3 LLC (all affiliates of Columbia Development Companies).
Tenant:	4 Wellness Way LLC (an affiliate of Columbia Development Companies)
Term:	99-year
Rent:	Tenant owns a + 2.4-acre parcel of land with an address of 4 Wellness Way. This parcel is immediately adjacent to that certain +18.50 acres of land located immediately adjacent to 4 Wellness Way. In consideration of the granting of this ground lease to the Tenant the Tenant shall (i) transfer the fee interest in and to 4 Wellness Way to the Landlord and (ii) perform all necessary improvements related to the project known as 4 Wellness Way. This includes utilities for 4 Wellness Way, parking lot and roadway improvements, landscaping and sidewalks, curbs and tie into existing storm water system.

Shirish Parikh M.D. submitted an affidavit stating he is the sole member and Director of Wellness Way Holdings, LLC, and that transaction is an arm's-length agreement.

Sub-Lease Agreement

A draft sub-lease for the ASC has been submitted with the terms summarized below.

Premises:	4 Wellness Way, Town of Colonie, 18,329 sq. ft.
Landlord:	4 Wellness Way LLC (an affiliate of Columbia Development Companies and Wellness Way Holdings, LLC, to be named Wellness Way ASC, LLC, upon approval.
Tenant:	Wellness Way Holdings, LLC, (Which will be named upon approval Wellness Way ASC, LLC upon approval
Term:	15-Years from rental commencement date with 1 (5-year) renewal option.
Premises:	18,329 Square Feet
Rent:	Total rent is \$938,628 annually increased by 2% per year.
Note:	Landlord owns a ground leasehold interest to the land pursuant to a certain Ground Lease by and between the Landlord and other Columbia Development Companies affiliates. Pursuant to the terms of the Ground Lease, Landlord intends to construct a 50,000-square-foot building on the Land to lease a portion of the Building to the Tenant.

The ASC will be under a Sublease Agreement between 4 Wellness Way LLC, as Landlord, and Wellness Way Holdings, LLC, to be named Wellness Way ASC, LLC (Wellness Way ASC), as Tenant. The 15-year sublease agreement is subject to a 99-year Ground Lease between Columbia affiliates. The applicant has submitted an affidavit stating the lease between the property owner and the lessee is an arm's length arrangement. The applicant has submitted (2) letters from NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Administrative Service Agreement

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

Operator:	Wellness Way ASC, LLC
Consultant:	CCP TASS Inc.
Term:	Term is upon 2 nd anniversary and may be renewed collectively.
Services:	Help to secure and monitor all permits; advise on purchasing of supplies; efforts to secure financing on behalf of the company; policies and procedures updates; coordinate seeking legal advice; subject to company approval to develop assistance fees and contracts; monitoring utilization and software management; recruiting activities; monthly financial reports; and assisting with education and training of clerical staff.
Fees:	\$600,000 annually paid in monthly installments.

The operator does not delegate to the consultant any responsibilities nor give any independent authority over the reserved responsibilities in the agreement. The operator has sole discretion to all operations and independent control over all records, policies, and procedures. All rights to approve or disapprove remain with the operator solely.

Capability and Feasibility

The total project cost of \$5,095,960 will be met with \$595,960 in members' equity and an equipment bank loan for \$4,500,00 for a 7-year term at an interest rate estimated to be 6.55% to Wellness Way Holdings, LLC. The applicant has submitted a bank letter of interest.

The working capital requirements are estimated at \$1,614,551, based on two months of Year Three expenses, will be funded with members' equity of \$807,276 and the remainder with a fixed loan to Wellness Way Holdings, LLC, in the amount of \$807,275 with a three-year term and an estimated interest rate of 6.69%. A letter of interest from Berkshire Bank has been submitted.

BFA Attachment A, Net Worth Statement of Proposed Members of Wellness Way ASC LLC, indicates sufficient resources overall to fund the equity requirements for this application. The submitted budget projects a net income of \$383,938 and \$751,834 during Year One and Year Three of operations, respectively. The budget appears reasonable.

BFA Attachment B, Pro-Forma Balance Sheet, shows Wellness Way, ASC will begin operation with \$1,403,236 in member equity as of the first day of operations.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Members of Wellness Way ASC LLC
BFA Attachment B	Pro-Forma Balance Sheet
BFA Attachment C	Organizational Chart after PHHPC approval

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a Multi-Specialty Ambulatory Surgery Center at 4 Wellness Way, Suite 100, Latham, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251137 B

FACILITY/APPLICANT:

Wellness Way ASC, LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Architectural Design Development Drawings: submission of architectural and life safety drawings, acceptable to the Department, as described in the Bureau of Architecture and Engineering Review Drawing Submission Guidelines DSG-1.0 [AER]
3. Engineering Design Development Drawings: submission of mechanical, electrical, plumbing and fire protection drawings, acceptable to the Department, as described in the Bureau of Architecture and Engineering Review Drawing Submission Guidelines DSG-1.0 [AER]
4. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of a ground lease agreement, acceptable to the Department. [BFA]
6. Submission of an executed sub-lease, acceptable to the Department of Health. [BFA]
7. Submission of an executed bank loan for construction, acceptable to the Department of Health. [BFA]
8. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]
9. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
10. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the centers commitment to meet the health care needs of the community, including the provision of services to those in need, regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
11. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;

- f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans.
- [RNR]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **October 1, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **July 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: http://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 251118-E
OrthoNY Ambulatory Surgery Center - Albany

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Albany
Acknowledged: March 17, 2025

Executive Summary

Description

Executive Woods Ambulatory Surgery Center LLC d/b/a OrthoNY Ambulatory Surgery Center - Albany (the Center), an existing New York proprietary, limited liability corporation that operates an Article 28 single-specialty freestanding ambulatory surgery center (FASC), at 3 Atrium Drive, Albany (Albany County), requests approval to transfer 100% of its membership interest to two (2) proposed new members: OrthoNY Master ASC Holdings, LLC (ASC Holdings) and OrthopedicsNY, LLP (OrthoNY).

The Center is currently owned by 19 individual physician members, each of whom has approximately a 5.263% interest in the Center

The current and proposed ownership is presented below:

Executive Woods Ambulatory Surgery Center, LLC (current)

Members	Current Interests
J. David Abraham	5.263%
James Alfandre	5.263%
Farrukh Ansari	5.263%
Charles Buttaci	5.263%
Frank Congiusta	5.263%
Samuel Dellenbaugh	5.263%
David Dixon	5.263%
Daniel Donovan	5.263%
Frederick Fletcher	5.263%
Kyle Flik	5.263%

Leonard Goldstock	5.263%
Lee Kaback	5.263%
Richard Katz	5.263%
William Montgomery	5.263%
Amar Parikh	5.263%
Luke Rigolosi	5.263%
W. James Smith	5.263%
Adam Suslak	5.263%
John Whalen	5.263%
Total:	100.000%

Executive Woods Ambulatory Surgery Center, LLC (proposed)

Members	Proposed Interest
OrthoNY Master ASC Holdings, LLC (ASC Holdings)	75%
OrthopedicsNY, LLP (OrthoNY)	25%
Total	100%

OrthoNY Master ASC Holdings, LLC is comprised of thirty-eight (38) physician members including twenty (20) new physician members with direct membership in the LLC. It should be noted that these new members are not current members of Executive Woods Ambulatory Surgery Center, LLC.

OrthopedicsNY LLP is comprised of the 33 physician members.

Kyle Flik, M.D., Board-Certified in Orthopedics, will continue to serve as the Medical Director. The Center has a Transfer and Affiliation Agreement for emergency and backup services with St. Peter's Hospital, 3.4 miles (11 minutes travel time) away.

OPCHSM Recommendation

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

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs or service changes associated with this application. The Center will pay Dr. Fletcher \$225,000 to redeem his 5.263% membership interest in Executive Woods Ambulatory Surgery Center LLC. Six (6) new physician members will each pay \$400,000 for 2.632% membership in OrthoNY Master ASC Holdings LLC.. Their payments are held in escrow.

<u>Budget:</u>	<u>Current</u> <u>Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$10,697,620	\$11,056,620	\$11,056,620
Expenses:	<u>7,682,726</u>	<u>8,049,842</u>	<u>8,146,015</u>
	\$3,014,894	\$3,006,778	\$2,910,605

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon

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

Council Action Date

June 18, 2025

Program Analysis

Project Proposal

Executive Woods Ambulatory Surgery Center, LLC operates an existing Article 28 single-specialty (orthopedics) freestanding ambulatory surgery center located at 3 Atrium Drive, Albany (Albany County), New York 12205 (the Center). The Center is currently owned in equal amounts by 19 individual physician members. The Center is submitting this Certificate of Need Application to transfer 100% of its membership interest to two (2) proposed new corporate members: OrthoNY Master ASC Holdings, LLC (ASC Holdings) and OrthopedicsNY, LLP (OrthoNY). ASC Holdings will own 75% of the Center, and OrthoNY will own 25% of the Center. Furthermore, one (1) existing member of the Center, Frederick Fletcher, M.D., will redeem his membership interest and thereby withdraw from the Center. The Center will continue to be operated by Executive Woods Ambulatory Surgery Center, LLC.

ASC Holdings will own 75% of the Center and will be comprised of 38 physician members, each of whom will own approximately a 2.632% interest in ASC Holdings.

OrthoNY will own 25% of the Center and will be comprised of 33 physician partners. One (1) physician partner, Lee Kaback, will own approximately a 5.888% interest in OrthoNY. The other 32 physician partners will own approximately a 2.941% interest in OrthoNY.

Kyle Flik, M.D., an existing individual member of the Center, a proposed member of ASC Holdings, and a proposed partner of OrthoNY, will continue to serve as the Center's Medical Director.

Executive Woods Ambulatory Surgery Center, LLC (current)

Members	Percentage Interests
J. David Abraham	5.263%
James Alfandre	5.263%
Farrukh Ansari	5.263%
Charles Buttaci	5.263%
Frank Congiusta	5.263%
Samuel Dellenbaugh	5.263%
David Dixon	5.263%
Daniel Donovan	5.263%
Frederick Fletcher	5.263%
Kyle Flik	5.263%
Leonard Goldstock	5.263%
Lee Kaback	5.263%
Richard Katz	5.263%
William Montgomery	5.263%
Amar Parikh	5.263%
Luke Rigolosi	5.263%
W. James Smith	5.263%
Adam Suslak	5.263%
John Whalen	5.263%
Total:	100.000%

Executive Woods Ambulatory Surgery Center, LLC (proposed)

Members	Proposed Interest
OrthoNY Master ASC Holdings, LLC (ASC Holdings)	75%
OrthopedicsNY, LLP (OrthoNY)	25%
Total	100%

OrthoNY Master ASC Holdings, LLC

Direct Membership Interest in OrthoNY Master ASC Holdings, LLC:

Members	Percentage Interest
J. David Abraham, M.D.	2.632%
James Alfandre, M.D.	2.632%
Farrukh Ansari, M.D.	2.632%
Eric Aronowitz, M.D.	2.632%
James Boler, M.D.	2.632%
Daniel Bowman, M.D.	2.632%
Adam Brod, M.D.	2.632%
Charles Buttaci, D.O.	2.632%
Frank Congiusta, M.D.	2.632%
Mark Coseo, M.D.	2.632%
Samuel Dellenbaugh, M.D.	2.632%
David Dixon, M.D.	2.632%
Daniel Donovan, M.D.	2.632%
Kevin Emr, M.D.	2.632%
Justin Ferrara, M.D.	2.632%
Kyle Flik, M.D.	2.632%
Jonathan Gainor, M.D.	2.632%
Leonard Goldstock, M.D.	2.632%
Stefanos Haddad, M.D.	2.632%
Thomas Jackson, M.D.	2.632%
Andre Johnson, M.D.	2.632%
Lee Kaback, M.D.	2.632%
Richard Katz, M.D.	2.632%
Kevin Kleis, D.O.	2.632%
Joseph LaRosa, M.D.	2.632%
William Montgomery, M.D.	2.632%
Michael Okoli, M.D.	2.632%
Amar Parikh, M.D.	2.632%
Daniil Polishchuk, M.D.	2.632%
Luke Rigolosi, M.D.	2.632%
Kevin Rosas, M.D.	2.632%
Laura Scordino, M.D.	2.632%
George Silver, M.D.	2.632%
W. James Smith, M.D.	2.632%
Tory Speert, D.O.	2.632%
Matthew Stein, M.D.	2.632%
Adam Suslak, M.D.	2.632%

John Whalen, M.D.	2.632%
Total	100.000%

OrthopedicsNY, LLP

Direct Partnerships Interest in OrthopedicsNY, LLP:

Partners	Percentage Interest
J David Abraham, M.D.	2.941%
James Alfandre, M.D.	2.941%
Farrukh Ansari, M.D.	2.941%
Eric Aronowitz, M.D.	2.941%
James Boler, M.D.	2.941%
Daniel Bowman, M.D.	2.941%
Charles Buttaci, D.O.	2.941%
Frank Congiusta, M.D.	2.941%
Mark Coseo, M.D.	2.941%
Samuel Dellenbaugh, M.D.	2.941%
David Dixon, M.D.	2.941%
Daniel Donovan, M.D.	2.941%
Justin Ferrara, M.D.	2.941%
Kyle Flik, M.D.	2.941%
Jonathan Gainor, M.D.	2.941%
Leonard Goldstock, M.D.	2.941%
Thomas Jackson, M.D.	2.941%
Lee Kaback, M.D.	5.888%
Richard Katz, M.D.	2.941%
Kevin Kleis, DO.	2.941%
Joseph LaRosa, M.D.	2.941%
William Montgomery, M.D.	2.941%
Amar Parikh, M.D.	2.941%
Daniil Polishchuk, M.D.	2.941%
Luke Rigolosi, M.D.	2.941%
Kevin Rosas, M.D.	2.941%
Laura Scordino, M.D.	2.941%
George Silver, M.D.	2.941%
W. James Smith, M.D.	2.941%
Tory Speert, D.O.	2.941%
Matthew Stein, M.D.	2.941%
Adam Suslak, M.D.	2.941%
John Whalen, M.D.	2.941%
Total	100.000%

OrthoNY Ambulatory Surgery Center has an existing transfer and affiliation agreement with St. Peter's Hospital, 3.4 miles away and an 11-minute travel time from the Center.

Character and Competence:

Character and competence was completed for the 20 new physician members with a direct membership in OrthoNY Master ASC Holdings, LLC:

Eric Aronowitz, M.D., has been a partner in orthopedic practice at OrthoNY since 2014 and is the Medical Director of OrthoNY Surgical Suites. Prior to this, Dr. Aronowitz was a partner at Schenectady Regional Orthopedic Associates from 2000-2014. Dr. Aronowitz graduated from the University of Vermont with a bachelor's degree in 1990 and from SUNY Health Science Center at Syracuse with a Doctor of Medicine in 1994. Dr. Aronowitz is board-certified in Orthopaedic Surgery.

James Boler, M.D., has been an Orthopedic Surgeon for OrthoNY since 2014. Dr. Boler graduated from Brown University with a bachelor's degree in 1989 and from the University of Maryland School of Medicine at Baltimore with a Doctor of Medicine in 1995. Dr. Boler is board-certified in Orthopaedic Surgery with a sub-certification in hand surgery. Dr. Boler disclosed the following lawsuit:

D'ELIA, FULVIO vs. ELLIS HOSPITAL, SOMOZA, et al./Schenectady Supreme Court/2016-1290/Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case was dismissed on 7/28/22.

Daniel Bowman, M.D., has been an Orthopedic Surgeon for OrthoNY since 2014. Dr. Bowman graduated from SUNY Buffalo with a bachelor's degree in 1997 and from the Buffalo School of Medicine and Biomedical Sciences with a Doctor of Medicine in 2001. Dr. Bowman is board-certified in Orthopaedic Surgery.

Dr. Bowman disclosed the following lawsuits:

Schuppe vs. Daniel J. Bowman, MD, James Smith/Schenectady Court/Malpractice Claim

Per the applicant, this case was discontinued on 9/28/18.

PEARMAN, CEDRIC vs. BOWMAN, DANIEL J., MD, ORTHO NY/Schenectady Supreme Court/0002088/2018/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 8/31/2021.

On 11/16/16, the New York State Office of Professional Misconduct and Physician Discipline issued a censure and reprimand with a \$1,500 fine related to having committed professional misconduct by having been convicted of Aggravated Driving While Intoxicated. The physician had satisfied the terms of conditions on April 7, 2017.

Adam Brod, M.D., has been a practicing Orthopedic Surgeon at OrthoNY since May of 2023 and has been the chair of the department of orthopedics at Glens Falls Hospital for the last six years, with duties including managing the department and sitting on the medical executive committee of the hospital. Prior to this, Dr. Brod worked as an Orthopedic Surgeon at North Country Orthopedic Specialists from 2014-2018. Dr. Brod graduated from the University of Rochester with a bachelor's degree in 2004 and from the State University of New York at Buffalo with a Doctor of Medicine in 2008. Dr. Brod is board-certified in Orthopaedic Surgery.

Mark Coseo, M.D., has worked at OrthoNY since 2021 as a general Orthopedic Surgeon and Spine Surgeon. Prior to this, Dr. Coseo worked as an Orthopedic Surgeon at Naval Medical Center, Portsmouth from 2019-2021 and 2015-2018, and from 2018-2019 worked as the Director of Surgical Services of the Navy Role 2 Expeditionary Medical Unit. Dr. Coseo graduated from Cornell University with a bachelor's degree in 2003 and from the Uniformed Services University of the Health Sciences with a Doctor of Medicine in 2007. Dr. Coseo completed an internship in Orthopedic Surgery at Naval Medical Center in San Diego in 2008 and a residency in 2012. Dr. Coseo completed a fellowship in Adult and Pediatric Spine Surgery at Norton Leatherman Spine Center in 2015. Dr. Coseo is board-certified in Orthopaedic Surgery.

Kevin Emr, M.D., is a board-certified and licensed physician who performs surgical procedures in the ambulatory surgery center and participates in leadership roles in quality assurance. Dr. Emr graduated from Cornell University with a bachelor's degree in 2010 and from SUNY Upstate with a Doctor of Medicine in 2015. Dr. Emr completed an anesthesiology residency at Albany Medical Center in 2019 and a Pain Medicine Fellowship at Dartmouth Hitchcock Medical Center in 2020. Dr. Emr is board-certified in Anesthesiology and Preventive Medicine.

Dr. Emr disclosed the following pending lawsuit in which he has been named as a co-defendant: Colandrea vs. Howe et. al./Albany Supreme Court/ 904218-22/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, the complaint alleges a failure to properly position the plaintiff, causing bilateral lower extremity numbness, weakness, and pain. Dr. Emr was the attending anesthesiologist for the surgery and was not involved in the lower extremity positioning.

Justin Ferrara, M.D., has been a Physician Partner and Orthopedic Surgeon at OrthoNY since 2013. Prior to this, Dr. Ferrara was an Orthopedic Surgeon at Orthopaedic Associates of Saratoga from 2009-2012. Dr. Ferrara graduated from the University of Vermont with a bachelor's degree in 1996 and from Albany Medical College with a Doctor of Medicine in 2003. Dr. Ferrara is board-certified in Orthopaedic Surgery.

Dr. Ferrara disclosed the following lawsuits:

CAMPBELL, JAMES vs. ORTHONY, LLC FERRARA/Saratoga Supreme Court/6000289/2021/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case was discontinued in November of 2023.

Green vs. Shepard et al./Albany Supreme Court/ 0903400/2022/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, the jury found no cause on 12/12/24.

Arciero, Paul vs. FERRARA, JUSTIN M.D., OrthopedicsNY, LLP/Saratoga County/Malpractice Claim

Per the applicant, this case is pending.

Jonathan Gainor, M.D., has been an Orthopedic Surgeon for OrthoNY since 2010. Dr. Gainor graduated from Albany Medical College in 2000 with a master's degree and in 2004 with a Doctor of Medicine. Dr. Gainor is board-certified in Orthopaedic Surgery.

Stefanos Haddad, M.D., has been an Orthopedic Surgeon at OrthoNY for two years, completing roughly 500 surgeries at the Center in the last year. Dr. Haddad graduated from SUNY Albany with a bachelor's degree in 2011 and from SUNY Upstate Medical University with a Doctor of Medicine in 2016. Dr. Haddad completed a residency in Orthopedic Surgery at Albany Medical Center in 2021 and a fellowship at Rothman Institute Hand and Upper Extremity Surgery in 2022. Dr. Haddad is board-certified in Orthopaedic Surgery.

Thomas Jackson, M.D., has been an Orthopedic Surgeon with OrthoNY since 2015. Prior to this, Dr. Jackson worked as an Orthopedic Surgeon for Sports Medicine and Injury Care at Carolinas Healthcare System from 2011 to 2015. Dr. Jackson graduated from the University of Pittsburgh with a bachelor's degree in 1998 and from Temple University School of Medicine with a Doctor of Medicine in 2002. Dr. Jackson is board-certified in Orthopaedic Surgery with sub-certifications in Sports Medicine and Pain Medicine.

Dr. Jackson disclosed the following lawsuits:

SANTIAGO, CHANDRA A. AND SANTIAG vs. JACKSON, THOMAS R., MD AND ORTHONY/
Schenectady Supreme Court/0002773/2018/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case was discontinued on 11/11/2019.

Walsh, Roy et al vs. OrthoNY, LLP et al/ Montgomery Supreme Court/ EF2023-188/ Tort-Medical, Dental, or Podiatric Malpractice.

Per the applicant, this case is pending.

Andre Johnson, M.D., has worked as an Orthopedic Surgeon for OrthoNY since 2023 and has been the Chairman of the Department of Surgery at Glens Falls Hospital since 2018. Prior to this, Dr. Johnson worked for North Country Sports from 2012 to 2023. Dr. Johnson graduated from Northwestern University with a bachelor's degree in 1997 and from Albany Medical College with a Doctor of Medicine in 2001. Dr. Johnson completed a residency in Orthopedic Surgery at Akron General Medical Center in 2006 and a fellowship in Orthopedic Surgery in Sports Medicine at Nirschl Orthopaedic in 2007. Dr. Johnson is board-certified in Orthopaedic Surgery.

The following lawsuits were undisclosed:

LAWSON, MICHAEL J vs. JOHNSON, ANDRE H, MD., NORTH COUNTRY/ Warren Supreme Court/
62552/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case was settled and closed on 7/26/17.

Kevin Kleis, D.O., has worked as an Orthopedic Surgeon for OrthoNY since 2019. Prior to this, Dr. Kleis worked as an Orthopedic Surgeon for Riverside Orthopedic Institute from 2016 to 2019 and at Kaiser Permanente from 2014 to 2016. Dr. Kleis graduated from Hobart and William Smith College with a bachelor's degree in 2006 and from the New York Institute of Technology College of Osteopathic Medicine with a Doctor of Osteopathic Medicine in 2011. Dr. Kleis is board-certified in Orthopaedic Surgery.

Joseph LaRosa, M.D., has worked for OrthoNY as an Orthopedic Surgeon since 2013. Dr. LaRosa graduated from Plattsburgh State University with a bachelor's degree in 1983 and from Albany Medical College with a Doctor of Medicine in 1987. Dr. LaRosa is board-certified in Orthopaedic Surgery.

Michael Okoli, M.D., has worked as an Orthopedic Surgeon at OrthopedicsNY since 2022. Prior to this, Dr. Okoli was a Clinical Research Coordinator at the Department of Neuropsychiatry at the Hospital of the University of Pennsylvania from 2009 to 2012. Dr. Okoli graduated from the University of Pennsylvania with a bachelor's degree in 2009 and from the Feinberg School of Medicine/Northwestern with a Doctor of Medicine in 2016. Dr. Okoli completed an internship in Orthopaedic Surgery at Thomas Jefferson University in 2021 and a fellowship in Hand and Microsurgery at SUNY Stony Brook University Hospital in 2022. Dr. Okoli is board-certified in Orthopaedic Surgery.

Daniil Polishchuk, M.D. has been an Orthopedic and Pain Management Provider for OrthoNY since 2014. Dr. Polishchuk graduated from Rutgers New Jersey Medical School with a Doctor of Medicine in 2011 and completed a fellowship in hip and knee reconstruction at NYOH, Columbia University Medical Center in 2012. Dr. Polishchuk is board-certified in Orthopaedic Surgery.

Dr. Polishchuk disclosed the following lawsuits:

Walsh, Roy et al vs. OrthoNY, LLP et al/ Montgomery Supreme Court/ EF2023-188/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case is pending.

Oliver, Debra vs. Daniil Polishchuk, M.D., OrthopedicsNY, LLP, Ellis Hospital/Schenectady County/Malpractice

Per the applicant, this case was discontinued in July 2022.

Kevin Rosas, M.D., has been an Orthopedic Surgeon at OrthoNY since 2014. Dr. Rosas graduated from Cornell University with a bachelor's degree in 1991 and from SUNY Downstate with a Doctor of Medicine in 1998. Dr. Rosas is board-certified in Orthopaedic Surgery.

Dr. Rosas disclosed the following lawsuits:
CASCINI, JEFFREY vs. ROSAS, KEVIN E. MD WASACZ et al/ Schenectady Supreme Court/ 0001150/2021/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case was settled in July of 2023.

O'NEILL, JODY - AS PARENT OF KJO, AN INFA vs. COMMUNITY CARE PHYSICIANS, P.C. CLIFTON et al/ Saratoga Supreme Court/ 7001037/2020/ Tort-Medical, Dental, or Podiatric Malpractice

This case was discontinued in August 2024.

Laura Scordino, M.D., has been an Orthopedic Surgeon with OrthoNY since 2015. Prior to this, Dr. Scordino was a Clinical Instructor of Orthopedic Surgery Residents through Albany Medical College from 2015-2019. Dr. Scordino graduated from Binghamton University with a bachelor's degree in 2004 and from Upstate Medical University with a Doctor of Medicine in 2009. Dr. Scordino is board-certified in Orthopaedic Surgery.

George Silver, M.D., has been an Orthopedic Surgeon at OrthoNY since 2000. Dr. Silver graduated from Union College with a bachelor's degree in 1990 and from Georgetown University with a Doctor of Medicine in 1995. Dr. Silver is board-certified in Orthopaedic Surgery.

Tory Speert, D.O., has worked as a Pain Medicine Specialist for OrthoNY since 2017. Dr. Speert graduated from the College of New Jersey in 2008 with a bachelor's degree and from Rowan University School of Osteopathic Medicine with a Doctor of Osteopathic Medicine in 2012. Dr. Speert completed an internship at CarePoint Health in 2013, a residency at Rutgers/Kessler Institute for Rehabilitation in 2016, and a fellowship at Orthopedic and Spine Specialists in 2017. Dr. Speert is board-certified in Physical Medicine and Rehabilitation.

Matthew Stein, M.D., has worked as an Orthopedic Surgeon for OrthoNY since 2015. Dr. Stein graduated from Haverford College with a bachelor's degree in 2005 and from NYU School of Medicine with a Doctor of Medicine in 2009. Dr. Stein completed a residency at USF Health in 2014 and a fellowship at Jefferson University in 2015. Dr. Stein is board-certified in Orthopaedic Surgery. Dr. Stein disclosed the following lawsuits:

Dalaba, Theodore vs. Stein, Matthew, MD/Saratoga County/Malpractice Claim

Per the applicant, this case was settled on 6/27/23.

Gallo vs. OrthoNY et al./ Albany Supreme Court/905043-23/Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case is pending.

Morrissey, Kelly vs. OrthoNY et al/Saratoga Supreme Court/EF20233692/Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case is pending.

The following case names OrthoNY:

Sayers vs. OrthopedicsNY/Albany Supreme Court/ 911154-24/ Comm-Contract

Per the applicant, this is a class action lawsuit stemming from a potential disclosure of information due to a security incident during which cybercriminals accessed data from a portion of OrthoNY's computer network in December 2023. The lawsuit is pending.

Compliance with Applicable Codes, Rules, and Regulations

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

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

Conclusion

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

Financial Analysis

Financial Analysis

The applicant has submitted the current year (2023) and the first and third year projected operating budgets, in 2025 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Revenues:</u>	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>
Medicaid – FFS	\$1,045.86	\$14,642	\$1,066.79	\$14,935	\$1,066.79	\$14,935
Medicaid – MC	\$1,691.20	979,204	\$1,690.00	998,788	\$1,690.00	998,788
Medicare – FFS	\$1,785.25	822,999	\$1,786.08	839,459	\$1,786.08	839,459
Medicare - MC	\$2,008.92	1,558,925	\$2,007.71	1,590,104	\$2,007.71	1,590,104
Commercial- FFS	\$2,900.96	6,013,682	\$2,901.57	6,279,003	\$2,901.57	6,279,003
Private Pay	\$6,557.50	39,345	\$6,688.67	40,132	\$6,688.67	40,132
All Other	\$2,711.16	<u>1,268,823</u>	\$2,707.53	<u>1,294,199</u>	\$2,707.53	<u>1,294,199</u>
Total Revenue		\$10,697,620		\$11,056,620		\$11,056,620.
<u>Expenses:</u>						
Operating	\$1,677.48	\$7,342,328	\$1,673.06	\$7,709,444	\$1,693.93	\$7,805,617
Capital	<u>\$77.77</u>	<u>340,398</u>	<u>\$73.87</u>	<u>340,398</u>	<u>\$73.87</u>	<u>340,398</u>
Total Expenses:	\$1,755.25	\$7,682,726	\$1,746.93	\$8,049,842	\$1,767.80	\$8,146,015
Net Income		<u>\$3,014,894</u>		<u>\$3,006,778</u>		<u>\$2,910,605</u>
Procedures		4,377		4,608		4,608
Cost /Procedure		\$1,755.25		\$1,740.00		\$1,767.80

The following is noted concerning the submitted budget:

- The Current Year reflects the facility's 2023 cost reports.
- Current Year staffing reflects 2023 staffing levels and utilizes 2023 AHCF cost report data. No change is expected in Year One and Year Three.
- Years One and Year Three project an increase in utilization, expense, and revenue, based on the Center's historical performance.
- Years One and Year Three reimbursement rates reflect the Center's 2023 rates.

Utilization by payor for the Current Year, Year One, and Year Three is broken down as follows:

<u>Payor:</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Proc</u>	<u>%</u>	<u>Proc</u>	<u>%</u>	<u>Proc</u>	<u>%</u>
Medicaid - FFS	14	0.32%	14	0.30%	14	0.30%
Medicaid - MC	579	13.23%	591	12.83%	591	12.83%
Medicare – FFS	461	10.53%	470	10.20%	470	10.20%
Medicare - MC	776	17.73%	792	17.19%	792	17.19%
Commercial – FFS	2,073	47.36%	2,164	46.96%	2,164	46.96%
Private Pay	6	0.14%	6	0.13%	6	0.13%
Charity	0	0.00%	93	2.02%	93	2.02%
All Other	<u>468</u>	<u>10.69%</u>	<u>478</u>	<u>10.37%</u>	<u>478</u>	<u>10.37%</u>
Total	4,377	100%	4,608	100%	4,608	100%

Lease Amendment Two

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

Date:	January 7, 2013.
Premises:	3 Atrium Drive, Albany, New York, 12205
Landlord:	Executive Woods, LLC (100% owner of former landlord Huntington Associates of Albany, LLC)
Tenant:	Executive Woods Ambulatory Surgery Center, LLC (Assigned from OrthopedicsNY, LLP - formerly aka Northeast Orthopedics, LLP)
Term:	Renewed through December 31, 2029
Current Rent:	\$230,132 (\$19,177.67 per month) plus an annual escalator of \$8,198.72
Provisions:	Tenant is responsible for taxes, insurance, utilities, and maintenance.

There is no relationship between the landlord and the tenant. The lease has been previously approved.

Amended and Restated Administrative Service and Billing Agreement

The applicant has submitted an executed administrative service and billing agreement; the terms are summarized below:

Date:	December 13, 2024
Operator:	Executive Woods Ambulatory Surgery Center, LLC
Contractor:	OrthopedicsNY, LLP
Services Provided:	Provide financial management services, including budget preparation, bookkeeping, bank account reconciliation, accounts payable, accounts receivable management, and economic analysis. Provide monthly reports of revenue/expense with budget variance analysis for review. Establishing, monitoring, and presenting key performance indicators monthly. Generate required financial and operational reports, including DOH/SPACS data files, pool reports, and cost reporting. Provide support for the Operator's maintenance of its EHR and Practice Management Software system. Establish and maintain the Operator's IT network infrastructure, including security procedures—aid Operator concerning human resources management and recruitment, interviewing, and evaluating staffing candidates, and supervising, coordinating, and facilitating the performance of the Operator's annual strategic planning functions for the Center, including a yearly governing body meeting. The parties mutually agree in writing to carry out other functions.
Term:	20 years with automatic ten (10) year renewal
Fee:	\$229,000 per year (\$19,083.33 per month), after the first 12 months, the parties will establish a monthly fee for the next six months

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 13, 2025, the facility had no outstanding Medicaid overpayment liabilities.

Outside Manager Agreement – Executive Woods Ambulatory Surgery Center, LLC
The applicant has submitted an executed Outside Manager Agreement as summarized below:

Date:	January 15, 2025 (effective upon the Department's approval)
Operator:	Executive Woods Ambulatory Surgery Center, LLC
Outside Manager:	David Fitzgerald
Services:	The Manager shall devote time to the Company as is reasonably necessary for performing his duties. Shall have the right to vote on all matters presented to the Company's Board of Managers and act in good faith and the Company's best interest. The Manager defers to OrthoNY on all issues that require Facility control.
Term:	3 years with automatic three (3) year renewal (each renewal to be approved by the Department)
Consideration; Reimbursement:	The manager shall have an ongoing affiliation with OrthoNY and further professional development, education, and growth. The manager will be entitled to reimbursement from the Company for all reasonable and documented expenses incurred by the Manager in managing and conducting the business and affairs of the Company, provided all costs are incurred under the Company's policies, procedures, and budgetary limits.

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Unit Redemption Agreement

The applicant has submitted executed Unit Redemption Purchase Agreements as summarized below:

Date:	December 13, 2024
Purchaser:	Executive Woods Ambulatory Surgery Center. LLC
Seller:	Frederick Fletcher, M.D.
Sold:	Frederick Fletcher, M.D., will sell 5.263% of his Executive Woods Ambulatory Surgery Center, LLC membership.
Consideration:	\$225,000 to be funded by the current 18 individual owners of OrthoNY ASC Holdings, LLC., at \$12,500 each (18 X \$12,500 = \$225,000)

BFA Attachment A, Summary of members' net worth, shows sufficient resources to meet the obligation.

OrthoNY Master ASC Holdings, LLC Unit Purchase Agreements

The applicant has submitted five (5) executed OrthoNY Master ASC Holdings, LLC Unit Purchase Agreements as summarized below:

Dates:	January 15, 2025, February 5, 2025, and February 10, 2025
Purchaser:	Adam Brod, M.D.; Kevin Emr, M.D.; Stefanos Haddad, M.D.; Andre Johnson, M.D. and Michael Okoli, M.D.
Seller/Company:	OrthoNY Master ASC Holdings, LLC
Purchase:	Each will purchase a 2.632% interest in OrthoNY Master ASC Holding, LLC.
Purchase Price:	Each has placed \$400,000 in escrow.

Amended and Restated OrthoNY Master ASC Holdings, LLC Unit Purchase Agreement
The applicant has submitted one (1) executed amended and restated OrthoNY Master ASC Holdings, LLC Unit Purchase Agreement as summarized below:

Date:	December 31, 2024
Purchaser:	Mark Coseo, M.D.
Seller/Company:	OrthoNY Master ASC Holdings, LLC
Purchase:	Purchaser previously agreed to purchase a 3.03% interest in OrthoNY Master ASC Holdings, LLC. The Company amended the agreement to sell a 2.632% interest in OrthoNY Master ASC Holdings, LLC.
Purchase Price:	\$400,000 has been placed in escrow

Contribution, Exchange, and Distribution Agreement - OrthoNY Master ASC Holdings, LLC (aka ASC Holdings)

The applicant has submitted an executed Contribution, Exchange, and Distribution Agreement- OrthoNY Master ASC Holdings, LLC (relates to CON 251118, 251131, and 251147) as summarized below:

Date:	December 13, 2024
Contributors:	OrthoNY Master ASC Holdings, LLC – Members Contribution Matrix
Company:	OrthoNY Master ASC Holdings, LLC
Contributed Equity:	CON 251118 Executive Woods Ambulatory Surgery Center, LLC (EWASC) CON 251131 Clifton Part ASC, LLC (CPASC) CON 251147 Everett Road ASC, LLC (ERASC)
Agreed Value of Capital Contributions	\$3,780,202.97 from 32 physician members ($\$3,780.97 \times 32 = \$120,966,495$)
Cash Payments:	OrthoNY Master ASC Holdings, LLC will pay \$223,777.55 to 14 CPASC contributor physician members, totaling \$3,132,885. ($\$223,777.55 \times 14 = \$3,132,885$)
Funded:	All 38 proposed OrthoNY Master ASC Holdings, LLC members will share equally in funding the \$3,132,885 to the 14 CPASC contributor owners. Each will pay \$82,444.34 ($38 \times \$82,444.34 = \$3,132,885$)

BFA Attachment A, Summary of members' net worth, shows sufficient resources to meet the obligation.

Contribution, Exchange, and Distribution Agreement – OrthopedicsNY, LLP (aka OrthoNY)

The applicant has submitted an executed Contribution, Exchange, and Distribution Agreement- OrthopedicsNY, LLP (relates to CON 251118, 251131, and 251147) as summarized below:

Date:	December 13, 2024
Contributors:	OrthopedicsNY, LLP – Members Contribution Matrix
Company:	OrthopedicsNY LLP
Contributed Equity:	CON 251118 Executive Woods Ambulatory Surgery Center, LLC (EWASC) CON 251131 Clifton Part ASC, LLC (CPASC) CON 251147 Everett Road ASC, LLC (ERASC)
Agreed Value of Capital Contributions	\$1,260,067.66 from 32 physician members ($\$1,260,067.66 \times 32 = \$40,322,165$)
No Cash Payments (Value assigned for tax purposes and accounting):	OrthoNY is paying \$756,785.07 to 32 physician members for a total of \$24,217,123 ($\$756,785.07 \times 32 = \$24,217,123$)

Capability and Feasibility

There are no project costs or service charges associated with this application. The Center will pay Dr. Fletcher \$225,000 to redeem his 5.263% membership interest in Executive Woods Ambulatory Surgery Center LLC. Six (6) new physician members will each pay \$400,000 for 2.632% membership in OrthoNY Master ASC Holdings LLC. Their payments are held in escrow. The applicant submitted two (2) contribution, exchange and distribution agreements, one for OrthoNY Master ASC Holding members and one for Orthopedics NY LLP. These agreements account for the current members of the OrthoNY's equity contribution into the new member organizations. There was a cash value assigned to these equity contributions but no cash changed hands and the cash value was used solely for book keeping purposes.

The working capital requirement is estimated at \$1,341,641 based on two months of first-year expenses. Funding will be met with equity from the operations and, if necessary, from its members. BFA Attachment A, Net Worth Statement of Proposed Members, and BFA Attachment H, 2023 Certified Financial Statements and December 31, 2024, Internal Financial Statement Executive Woods Ambulatory Surgery Center, LLC, show sufficient resources to meet the equity requirements.

The budget projects a net income of of \$3,006,778 and \$2,910,605, in Year One and Year Three, respectively. The budget appears reasonable.

BFA Attachment H shows a positive working capital position, positive net asset position, and a net income of \$3,092,185 in 2023 and a \$5,230,639 net income as of December 31, 2024.

BFA Attachment G, Executive Woods Ambulatory Surgery Center, LLC Pro Forma Balance Sheet, shows operations will have \$2,351,602 in members' equity as of the first day of operations.

Conclusion

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

Attachments

BFA Attachment A	Executive Woods Ambulatory Surgery Center, LLC – Net Worth of Proposed Members
BFA Attachment B	Executive Woods Ambulatory Surgery Center, LLC – Current Members
BFA Attachment C	OrthoNY Master ASC Holdings, LLC – Proposed 38 Members Direct Ownership Interest
BFA Attachment D	OrthoNY Master ASC Holdings, LLC – Proposed 38 Members Indirect Ownership Interest in Executive Woods Ambulatory Surgery Center, LLC
BFA Attachment E	OrthopedicsNY LLP - Proposed 33 Members Direct Ownership Interest
BFA Attachment F	OrthopedicsNY LLP - Proposed 33 Members Indirect Ownership Interest in Executive Woods Ambulatory Surgery Center, LLC
BFA Attachment G	Executive Woods Ambulatory Surgery Center, LLC - Pro Forma
BFA Attachment H	Executive Woods Ambulatory Surgery Center, LLC – 2023 Certified Financial Statement and December 31, 2024, Internal Financial Statement.
BFA Attachment I	Executive Woods Ambulatory Surgery Center, LLC – Current and Post-Transaction Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% of ownership interest from 19 individual physician members to two new corporate members with no change of operator, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251118 E

FACILITY/APPLICANT:

OrthoNY Ambulatory Surgery Center - Albany

APPROVAL CONTINGENT UPON:

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

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

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Department of Health

Public Health and Health Planning Council

Project # 251131-E OrthoNY Surgical Suites

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Saratoga
Acknowledged: March 20, 2025

Executive Summary

Description

Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites (the Center), an existing New York proprietary, limited liability corporation that operates an Article 28 multi-specialty freestanding ambulatory surgery center (FASC) at 16 Maxwell Drive, Clifton Park (Saratoga County), New York 12065 requests approval to transfer 100% of its membership interest to two (2) proposed new corporate members: OrthoNY Master ASC Holdings, LLC (ASC Holdings) and OrthopedicsNY, LLP (OrthoNY).

The Center is currently owned by 15 individual physician members, each of whom has approximately a 6.667% interest in the Center

The current and proposed ownership is presented below:

Clifton Park ASC, LLC (current):

Members	Percentage Interests
Eric Aronowitz, M.D.	6.667%
James Boler, M.D.	6.667%
Daniel Bowman, M.D.	6.667%
Justin Ferrara M.D.	6.667%
Jonathan Gainor M.D.	6.667%
Thomas Jackson, M.D.	6.667%
Kevin Kleis, M.D.	6.667%
Joseph Larosa, M.D.	6.667%
William O'Connor, M.D.	6.667%
Daniil Polishchuk, M.D.	6.667%
Kevin Rosas, M.D.	6.667%
Laura Scordino, M.D.	6.667%
George Silver, M.D.	6.667%

Tory Speert, M.D.	6.667%
Matthew Stein, M.D.	6.667%
Total:	100.000%

Clifton Park ASC, LLC (proposed):

Members	Proposed Interest
OrthoNY Master ASC Holdings, LLC (ASC Holdings)	75%
OrthopedicsNY, LLP (OrthoNY)	25%
Total	100%

OrthoNY Master ASC Holdings, LLC is comprised of thirty-eight (38) physician members including twenty-four (24) new physician members with direct membership in the LLC. It should be noted that these new members are not current members of Clifton Park, ASC LLC.

OrthopedicsNY LLP is comprised of the 33 physician members.

Eric Aronowitz, M.D., an existing individual member of the Center, proposed member of ASC Holdings, and proposed partner of OrthoNY, will continue to serve as the Center's Medical Director. OrthoNY Surgical Suites has an existing transfer and affiliation agreement with Ellis Hospital, 10.2 miles and 20 minutes travel time from the Center.

OPCHSM Recommendation

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

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs or service changes associated with this application. The Center will pay Dr. O'Connor \$450,000 to redeem his 6.667% membership interest in Clifton Park ASC, LLC. Six (6) new physician members will each pay \$400,000 for 2.632% membership in OrthoNY Master ASC Holdings LLC.. Their payments are held in escrow.

<u>Budget:</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
	<u>Year</u>		
Revenues:	\$15,974,815	\$15,913,819	\$15,913,819
Expenses:	<u>11,543,220</u>	<u>12,082,059</u>	<u>12,246,262</u>
	\$4,431,595	\$3,831,760	\$3,657,557

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

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

Council Action Date

June 18, 2025

Program Analysis

Program Description

Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites operates an existing Article 28 multi-specialty freestanding ambulatory surgery center located at 16 Maxwell Drive, Clifton Park (Saratoga County), New York 12065 (the Center). The Center is currently owned in equal amounts by 15 individual physician members. The Center is submitting this Certificate of Need Application to transfer 100% of its membership interest to two (2) proposed new corporate members: OrthoNY Master ASC Holdings, LLC (ASC Holdings) and OrthopedicsNY, LLP (OrthoNY). ASC Holdings will own 75% of the Center and OrthoNY will own 25% of the Center. Furthermore, one (1) existing member of the Center, William O'Connor, M.D., will redeem his membership interest and thereby withdraw from the Center. The Center will continue to be operated by Clifton Park ASC, LLC.

The Center is currently owned by 15 individual physician members, each of whom has approximately a 6.667% interest in the Center.

OrthoNY Master ASC Holdings, LLC will own 75% of the Center and will be comprised of 38 physician members, each of whom will own approximately a 2.632% interest in ASC Holdings.

OrthoNY will own 25% of the Center and will be comprised of 33 physician partners. One (1) physician partner, Lee Kaback, will own approximately a 5.888% interest in OrthoNY. The following 32 physician partners will own approximately a 2.941% interest in OrthoNY.

Eric Aronowitz, M.D., an existing individual member of the Center and a proposed member of ASC Holdings and a proposed partner of OrthoNY, will continue to serve as the Center's Medical Director.

Clifton Park ASC, LLC (current):

Members	Percentage Interests
Eric Aronowitz, M.D.	6.667%
James Boler, M.D.	6.667%
Daniel Bowman, M.D.	6.667%
Justin Ferrara M.D.	6.667%
Jonathan Gainor M.D.	6.667%
Thomas Jackson, M.D.	6.667%
Kevin Kleis, M.D.	6.667%
Joseph Larosa, M.D.	6.667%
William O'Connor, M.D. (selling share)	6.667%
Daniil Polishchuk, M.D.	6.667%
Kevin Rosas, M.D.	6.667%
Laura Scordino, M.D.	6.667%
George Silver, M.D.	6.667%
Tory Speert, M.D.	6.667%
Matthew Stein, M.D.	6.667%
Total:	100.000%

CLIFTON PARK ASC, LLC (proposed):

Members	Proposed Interest %
OrthoNY Master ASC Holdings, LLC (ASC Holdings)	75%
OrthopedicsNY, LLP (OrthoNY)	25%
Total	100%

OrthoNY Master ASC Holdings, LLC

Direct Membership Interest in OrthoNY Master ASC Holdings, LLC:

Members	Percentage Interest
J. David Abraham, M.D.	2.632%
James Alfandre, M.D.	2.632%
Farrukh Ansari, M.D.	2.632%
Eric Aronowitz, M.D.	2.632%
James Boler, M.D.	2.632%
Daniel Bowman, M.D.	2.632%
Adam Brod, M.D.	2.632%
Charles Buttaci, D.O.	2.632%
Frank Congiusta, M.D.	2.632%
Mark Coseo, M.D.	2.632%
Samuel Dellenbaugh, M.D.	2.632%
David Dixon, M.D.	2.632%
Daniel Donovan, M.D.	2.632%
Kevin Emr, M.D.	2.632%
Justin Ferrara, M.D.	2.632%
Kyle Flik, M.D.	2.632%
Jonathan Gainor, M.D.	2.632%
Leonard Goldstock, M.D.	2.632%
Stefanos Haddad, M.D.	2.632%
Thomas Jackson, M.D.	2.632%
Andre Johnson, M.D.	2.632%
Lee Kaback, M.D.	2.632%
Richard Katz, M.D.	2.632%
Kevin Kleis, D.O.	2.632%
Joseph LaRosa, M.D.	2.632%
William Montgomery, M.D.	2.632%
Michael Okoli, M.D.	2.632%
Amar Parikh, M.D.	2.632%
Daniil Polishchuk, M.D.	2.632%
Luke Rigolosi, M.D.	2.632%
Kevin Rosas, M.D.	2.632%
Laura Scordino, M.D.	2.632%
George Silver, M.D.	2.632%
W. James Smith, M.D.	2.632%
Tory Speert, D.O.	2.632%
Matthew Stein, M.D.	2.632%
Adam Suslak, M.D.	2.632%
John Whalen, M.D.	2.632%
Total	100.000%

OrthopedicsNY, LLP

Direct Partnerships Interest in OrthopedicsNY, LLP:

Partners	Percentage Interest
J David Abraham, M.D.	2.941%
James Alfandre, M.D.	2.941%
Farrukh Ansari, M.D.	2.941%
Eric Aronowitz, M.D.	2.941%
James Boler, M.D.	2.941%
Daniel Bowman, M.D.	2.941%
Charles Buttaci, D.O.	2.941%
Frank Congiusta, M.D.	2.941%
Mark Coseo, M.D.	2.941%
Samuel Dellenbaugh, M.D.	2.941%
David Dixon, M.D.	2.941%
Daniel Donovan, M.D.	2.941%
Justin Ferrara, M.D.	2.941%
Kyle Flik, M.D.	2.941%
Jonathan Gainor, M.D.	2.941%
Leonard Goldstock, M.D.	2.941%
Thomas Jackson, M.D.	2.941%
Lee Kaback, M.D.	5.888%
Richard Katz, M.D.	2.941%
Kevin Kleis, DO.	2.941%
Joseph LaRosa, M.D.	2.941%
William Montgomery, M.D.	2.941%
Amar Parikh, M.D.	2.941%
Daniil Polishchuk, M.D.	2.941%
Luke Rigolosi, M.D.	2.941%
Kevin Rosas, M.D.	2.941%
Laura Scordino, M.D.	2.941%
George Silver, M.D.	2.941%
W. James Smith, M.D.	2.941%
Tory Speert, D.O.	2.941%
Matthew Stein, M.D.	2.941%
Adam Suslak, M.D.	2.941%
John Whalen, M.D.	2.941%
Total	100.000%

OrthoNY Surgical Suites has an existing transfer and affiliation agreement with Ellis Hospital, 10.2 miles and 20 minutes travel time from the Center.

Character and Competence:

Character and competence was completed for the Medical Director and 24 new physician members with a direct membership in OrthoNY Master ASC Holdings, LLC.

J. David Abraham, M.D. has been an orthopedic surgeon with OrthoNY since 1995. Prior to this, Dr. Abraham had a solo practice from 1988-1995. Dr. Abraham graduated from Colby College with a bachelor's degree in 1975 and from Albany Medical College with a Doctor of Medicine in 1979.

James Alfandre, M.D. has been an orthopedic surgeon with OrthoNY since 2001. Dr. Alfandre also works as a staff physician for Executive Woods Ambulatory Surgery Center, St. Peter's Hospital, Samaritan Hospital, and St. Mary's Hospital in Troy. Dr. Alfandre has been on the OrthoNY Executive Committee since 2008 and has been the medical director of Executive Woods Ambulatory Surgery Center since 2008. Dr. Alfandre graduated from SUNY Health Science Center at Syracuse with a Doctor of Medicine in 1994 and is board certified in Orthopaedic Surgery.

Farrukh Ansari, M.D. has worked as an attending physician in pain management since September of 2015. Dr. Ansari has served as the chair of the physician recruitment committee at OrthoNY for four years as well as serving on the executive committee for three years. Dr. Ansari graduated from Stony Brook University School of Medicine with a Doctor of Medicine in 2010, completed an internship at Winthrop University Hospital in 2011, completed a residency in Anesthesiology at New York University School of Medicine in 2014, and completed a fellowship in Pain Medicine at Mount Sinai Beth Israel in 2015. Dr. Ansari is board certified in Anesthesiology and Pain Management.

Eric Aronowitz, M.D. will continue to be the medical director of the facility. Dr. Aronowitz has been a partner in orthopedic practice at OrthoNY since 2014. Prior to this, Dr. Aronowitz was a partner in Schenectady Regional Orthopedic Associates from 2000-2014. Dr. Aronowitz graduated from the University of Vermont with a bachelor's degree in 1990, and from SUNY Health Science Center at Syracuse with a Doctor of Medicine in 1994. Dr. Aronowitz is board certified in Orthopaedic Surgery.

Adam Brod, M.D. has been a practicing Orthopedic Surgeon at OrthoNY since May of 2023 and has been the chair of the department of orthopedics at Glens Falls Hospital for the last six years with duties including managing the department and sitting on the medical executive committee of the hospital. Prior to this, Dr. Brod worked as an Orthopedic Surgeon at North Country Orthopedic Specialists from 2014-2018. Dr. Brod graduated from the University of Rochester with a bachelor's degree in 2004 and from the State University of New York at Buffalo with a Doctor of Medicine in 2008. Dr. Brod is board certified in Orthopaedic Surgery.

Charles Buttaci, D.O. has worked for OrthoNY as a Pain Management Specialist since 2007. Dr. Buttaci graduated from Northeastern University with a bachelor's degree in 1997 and from the University of Medicine and Dentistry of New Jersey with a Doctor of Osteopathic Medicine https://en.wikipedia.org/wiki/Doctor_of_Osteopathic_Medicine in 1997. Dr. Buttaci is board certified in Physical Medicine and Rehabilitation.

Charles Buttaci disclosed the following lawsuit:

Kathleen Connery-Lacy vs. Charles Buttaci/Albany County Court/Malpractice

Per the applicant, this case was settled on 1/4/19.

Frank Congiusta, M.D. has been an Orthopedic Surgeon with OrthoNY since 2007. Dr. Congiusta graduated from Colombia University with a bachelor's degree in 1996 and from Albany Medical College with a Doctor in Medicine in 2000 and is board certified in Orthopaedic Surgery.

Frank Congiusta has disclosed the following lawsuits:

Ruth Dixon vs. Frank Congiusta/Albany County Court/Malpractice

Per the applicant, this case with discontinued on 4/23/2018.

Myriam Barrios vs. Frank Congiusta, OrthopedicsNY, LLP, Rich Dalabo, St. Peter's Hospital/Albany County Court/Malpractice.

Per the applicant this case settled in February of 2020.

Margaret Layuretti-O'neil vs. Frank Congiusta and OrthopedicsNY, LLP/Columbia County Court/Malpractice

Per the applicant this case was settled on 08/11/2023.

Patricia Perella vs. Frank Congiusta, OrthopedicsNY, LLP/Greene County Court/Malpractice

Per the applicant, this case was discontinued in 2023.

Mark Coseo, M.D. has worked at OrthoNY since 2021 as a general Orthopedic Surgeon and Spine Surgeon. Prior to this, Dr. Coseo worked as an Orthopedic Surgeon at Naval Medical Center, Portsmouth from 2019-2021 and 2015-2018, and from 2018-2019 worked as the Director of Surgical Services of Navy Role 2 Expeditionary Medical Unit. Dr. Coseo graduated from Cornell University with a bachelor's degree in 2003 and from the Uniformed Services University of the Health Sciences with a Doctor of Medicine 2007. Dr. Coseo completed an internship in Orthopedic Surgery at Naval Medical Center in San Diego in 2008 and a residency in 2012. Dr. Coseo completed a fellowship in Adult and Pediatric Spine Surgery at Norton Leatherman Spine Center in 2015. Dr. Coseo is board certified in Orthopaedic Surgery.

Samuel Dellenbaugh, M.D. has worked as an Orthopedic Surgeon for OrthoNY since 2013. Dr. Dellenbaugh graduated from Princeton University with a bachelor's degree in 1996 and from Colombia College with a Doctor of Medicine in 2007. Dr. Dellenbaugh is board certified in Orthopaedic Surgery. Dr. Dellenbaugh disclosed the following lawsuits:

Amy Nicole (Lalosa) vs. Samuel Dellenbaugh, M.D./Albany County Court/Malpractice

Per the applicant, this case settled in February 2025.

Daniel Winters vs. Samuel Dellenbaugh, M.D, OrthopedicsNY, LLP, Joseph Kraut, Chris Sczesniak/Albany County Court/Malpractice

Per the applicant, this case was discontinued on 8/28/2024.

David Dixon, M.D. has been an Orthopedic Surgeon with OrthoNY since 2003, specializing in orthopedic foot and ankle reconstruction and trauma surgery. Dr. Dixon graduated from the Holy Cross College with a bachelor's degree in 1991 and from the University of Vermont Medical School with a Doctor of Medicine in 1995. Dr. Dixon is board certified in Orthopaedic Surgery.

Dr. Dixon disclosed the following lawsuits:

Wendy Candiano vs. David Dixon, St. Peter's Hospital

Per the applicant, this case was settled in December of 2022

Kathy Neidrauer vs. David Dixon, OrthopedicsNY, LLP/Albany County Court/Malpractice

Per the applicant, this case is still pending.

Daniel Donovan, M.D. has worked as an Orthopedic Surgeon at OrthoNY since 2018. Dr. Donovan graduated from the State University of New York College at Geneseo with a bachelor's degree in 2008, and from the State University of New York at Buffalo School of Medicine with a Doctor of Medicine in 2012. Dr. Donovan completed an Orthopaedic Surgery Residency at Mt. Sinai St. Luke's in 2017 and a Hand and Upper Extremity Surgery Microsurgery Fellowship at the University of California in August of 2018. Dr. Donovan is board certified in Orthopaedic Surgery.

Kevin Emr, M.D. is a board certified and licensed physician who performs surgical procedures in the ambulatory surgery center and participates in leadership roles in quality assurance. Dr. Emr graduated from Cornell University with a bachelor's degree in 2010 and from SUNY Upstate with a Doctor of Medicine in 2015. Dr. Emr completed an anesthesiology residency at Albany Medical Center in 2019 and a Pain Medicine Fellowship at Dartmouth Hitchcock Medical Center in 2020. Dr. Emr is board certified in Anesthesiology and Preventative Medicine.

Dr. Emr disclosed the following pending lawsuit which he has been named as a co-defendant:

Colandrea vs. Howe et. al./Albany Supreme Court/ 904218-22/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, the complaint alleges a failure to properly position the plaintiff causing bilateral lower extremity numbness, weakness, and pain. Dr. Emr was the attending anesthesiologist for the surgery and was not involved in the lower extremity positioning.

Kyle Flik, M.D. has been an Orthopedic Surgeon with OrthoNY since 2005 and is also the Medical Director of Executive Woods Ambulatory Surgery Center. Dr. Flik graduated from Dartmouth College with a bachelor's degree in 1991 and from the University of Vermont with a Doctor of Medicine in 1999. Dr. Flik is board certified in Orthopaedic Surgery.

Dr. Flik disclosed the following lawsuits:

BURDO, ROBERT JR. vs. FLIK, KYLE R., M.D.; MEMORIAL HOSPITAL/Schenectady Supreme Court/2011-0650/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 7/3/2015

ROSETTI, RICHARD G vs. ORTHOPEDICSNY, LLP/New York Supreme Court/ 805039/2015/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 2/21/19

Leonard Goldstock, M.D. is an Orthopedic Surgeon and existing owner at Executive Woods ASC, LLC. Dr. Goldstock graduated from Cornell University with a bachelor's degree in 1985 and from Albany Medical College with a Doctor of Medicine in 1989. Dr. Goldstock completed an Internship in Orthopedics at Albany Medical Center in 1990, a residency at Albany Medical Center in 1994, and a fellowship in Hand and Upper Extremity at Massachusetts General Hospital in 1995. Dr. Goldstock is board certified in Orthopaedic Surgery.

Stefanos Haddad, M.D. has been an Orthopedic Surgeon at OrthoNY for two years, completing roughly 500 surgeries at the Center in the last year. Dr. Haddad graduated from SUNY Albany with a bachelor's degree in 2011, and from SUNY Upstate Medical University with a Doctor of Medicine in 2016. Dr. Haddad completed a residency in Orthopedic Surgery at Albany Medical Center in 2021 and a fellowship at Rothman Institute Hand and Upper Extremity Surgery in 2022. Dr. Haddad is board certified in Orthopaedic Surgery.

Andre Johnson, M.D. has worked as an Orthopedic Surgeon for OrthoNY since 2023 and has been the Chairman of the Department of Surgery at Glens Falls Hospital since 2018. Prior to this, Dr. Johnson worked for North Country Sports from 2012 to 2023. Dr. Johnson graduated from Northwestern University with a bachelor's degree in 1997 and from Albany Medical College with a Doctor of Medicine in 2001. Dr. Johnson completed a residency in Orthopedic Surgery at Akron General Medical Center in 2006 and a fellowship at in Orthopedic Surgery in Sports Medicine at Nirschl Orthopaedic in 2007. Dr. Johnson is board certified in Orthopaedic Surgery.

The following lawsuits were undisclosed:

LAWSON, MICHAEL J vs. JOHNSON, ANDRE H, MD., NORTH COUNTRY/ Warren Supreme Court/ 62552/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case settled and was closed on 7/26/17.

Lee Kaback, M.D. has worked for OrthoNY in various roles since 2013, including Urgent Care Medical Director since 2013, Executive team member since 2022, and Vice President since 2023. Dr. Kaback graduated from the University of Vermont with a bachelor's degree in 1995, from Albany Medical College with a master's degree in 1999, and from the University of Vermont with a Doctor of Medicine in 2004. Dr. Kaback completed a residency in Orthopedic Surgery at the University of Rochester in 2010 and a fellowship in arm and shoulder surgery at Brown University School of Medicine in 2011. Dr. Kaback is board certified in Orthopaedic Surgery.

Dr. Kaback disclosed the following lawsuits:

Scannapieco vs. Alfred M.D. et. al./ Albany Supreme Court/ 908628-23/Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case is still pending.

Stillman vs. Kaback et. al./ Albany Supreme Court/ 904910-21/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case settled in 2023.

Richard Katz, M.D. is an existing owner at Executive Woods ASC, LLC. Dr. Katz graduated from Vanier College in 1978 with a Diploma of collegiate studies and from McGill University with a Doctor of Medicine in 1983. Dr. Katz is board certified in Orthopaedic Surgery.

The following lawsuit was undisclosed:

Legace vs. Katz/ Albany Supreme Court/ 904113-22/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case resulted in a defense verdict in favor of Dr. Katz on 9/16/24.

William Montgomery, M.D. has been an Orthopedic Surgeon at OrthoNY since 2008. Dr. Montgomery graduated from the University of Vermont with a bachelor's degree in 1993, and from the University of Hawaii with a master's in public health in 1997 and with a Doctor of Medicine in 2001. Dr. Montgomery is board certified in Orthopaedic Surgery.

Dr. Montgomery disclosed the following lawsuit:

Walsh, Roy et al vs. OrthoNY, LLP et al/ Montgomery Supreme Court/ EF2023-188/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case is pending.

Michael Okoli, M.D. has worked as an Orthopedic Surgeon at OrthopedicsNY since 2022. Prior to this, Dr. Okoli was a Clinical Research Coordinator at the Department of Neuropsychiatry at the Hospital of the University of Pennsylvania from 2009 to 2012. Dr. Okoli graduated from the University of Pennsylvania with a bachelor's degree in 2009 and from the Feinberg School of Medicine/Northwestern with a Doctor of Medicine in 2016. Dr. Okoli completed an internship in Orthopaedic Surgery at Thomas Jefferson University in 2021 and a fellowship in Hand and Microsurgery at SUNY Stony Brook University Hospital in 2022. Dr. Okoli is board certified in Orthopaedic Surgery.

Amar Parikh, M.D. has worked as a Pain Management Specialist at OrthoNY since 2013. Dr. Parikh graduated from Union College with a bachelor's degree in 2004 and from Union University with a Master of Business Administration in 2005. In 2008 Dr. Parikh received a Doctor of Medicine from Albany Medical College and completed a residency and fellowship at Beth Israel Deaconess Medical Center in 2013. Dr. Parikh is board certified in Anesthesiology.

Luke Rigolosi, M.D. has worked as a pain management physician since 2005 at OrthoNY. Prior to this, Dr. Rigolosi was the Physician Director of Executive Woods ASC from 2008 to 2012 and an Executive Committee Member of OrthoNY from 2008-2016. Dr. Rigolosi graduated from Brown University with a bachelor's degree in 1995 and from New Jersey Medical School with a Doctor of Medicine in 2000. Dr. Rigolosi completed a residency at Kessler Institute for Rehabilitation in 2004 and a fellowship in Pain Management at Sinai of Baltimore via York in 2005. Dr. Rigolosi is board certified in Physical Medicine and Rehabilitation with a sub certification in Pain Medicine.

W. James Smith, M.D. has been an Orthopedic and Hand Surgeon at Northeast Orthopedics since 2012 and is a partner/owner in this facility. Dr. Smith graduated from Boston University School of Medicine with a Doctor of Medicine in 1984. Dr. Smith is board certified in Orthopaedic Surgery with subspecialty in Hand Surgery.

Dr. Smith disclosed the following lawsuit:

Schuppe vs. Daniel J. Bowman, MD, James Smith/Schenectady Court/Malpractice Claim

Per the applicant, this case was discontinued on 9/28/18.

Adam Suslak, M.D. is an Orthopedic Surgeon and has ownership in Executive Woods ASC, LLC since 2016 and Everett Road ASC since 2018. Dr. Suslak graduated from the University of Medicine and Dentistry of New Jersey with a Doctor of Medicine in 2005. Dr. Suslak is board certified in Orthopaedic Surgery.

John Whalen, M.D. has worked as an Orthopedic Surgeon, Spine Specialist for OrthoNY since 1995. Dr. Whalen graduated from Union College in 1985 with a bachelor's degree and from Yale School of Medicine in 1989 with a Doctor of Medicine. Dr. Whalen is board certified in Orthopaedic Surgery. Dr. Whalen disclosed the following lawsuits:

Gelais vs. John Whalen, MD, Northeast Orthopedics/Rensselaer County/Malpractice Claim

Per the applicant, this case was discontinued on 4/25/14.

Chaney vs. John Whalen, MD, Samaritan Hospital/Albany County/Malpractice Claim

Per the applicant, this case was discontinued on 3/24/24.

Bonneau vs. John Whalen, MD, Northeast Orthopedics/Albany County/Malpractice Claim

Per the applicant, this case was discontinued on 2/25/25.

The following case names OrthoNY:

Sayers vs. OrthopedicsNY/Albany Supreme Court/ 911154-24/ Comm-Contract

Per the applicant, this is a class action lawsuit stemming from a potential disclosure of information due to a security incident during which cybercriminals accessed data from a portion of OrthoNY's computer network in December 2023. The lawsuit is pending.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

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

Financial Analysis

Financial Analysis

The applicant has submitted the Current Year (2023) and the Year One and Year Three projected operating budgets, in 2025 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Revenues:</u>	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>
Medicaid – FFS	\$2,082.90	\$20,829	\$2,124.60	\$21,246	\$2,124.60	\$21,246
Medicaid – MC	\$1,693.39	983,859	\$1,692.30	1,003,536	\$1,692.30	1,003,536
Medicare – FFS	\$2,483.57	1,274,072	\$2,484.80	1,299,553	\$2,484.80	1,299,553
Medicare - MC	\$2,993.55	2,867,824	\$2,994.04	2,925,180	\$2,994.04	2,925,180
Commercial- FFS	\$4,159.17	9,512,011	\$4,159.17	9,466,260	\$4,159.17	9,466,260
Private Pay	\$1,354.38	10,835	\$1,381.50	11,052	\$1,381.50	11,052
All Other	\$2,852.25	1,163,717	\$2,853.35	1,186,992	\$2,853.35	1,186,992
Grant Non-Recur		<u>141,668</u>		<u>0</u>		<u>0</u>
Total Revenue		\$15,974,815		\$15,913,819		\$15,913,819
 <u>Expenses:</u>						
Operating	\$2,261.65	\$10,776,782	\$2,307.90	\$11,315,621	\$2,341.39	\$11,479,824
Capital	<u>\$160.85</u>	<u>766,438</u>	<u>\$156.32</u>	<u>766,438</u>	<u>\$156.32</u>	<u>766,438</u>
Total Expenses:	\$2,422.50	\$11,543,220	\$2,464.22	\$12,082,059	\$2,497.71	\$12,246,262
 Net Income						
		<u>\$4,431,595</u>		<u>\$3,831,760</u>		<u>\$3,667,557</u>
 Procedures						
		4,765		4,903		4,903
Cost/Procedure		\$2,423.00		\$2,464.22		\$2,497.71

The following is noted concerning the submitted budget:

- The Current Year reflects the facility's 2023 cost reports.
- Current Year staffing reflects 2023 staffing levels and utilizes 2023 AHCF cost report data. No change is expected in Year One and Year Three
- Years One and Year Three project an increase in utilization, expense, and revenue, based on the Center's historical performance.
- Years One and Year Three reimbursement rates reflect the Center's 2023 rates.

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

<u>Payor:</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Description</u>	<u>Proc</u>	<u>%</u>	<u>Proc</u>	<u>%</u>	<u>Proc</u>	<u>%</u>
Medicaid - FFS	10	0.21%	10	0.21%	10	0.21%
Medicaid - MC	581	12.19%	593	12.09%	593	12.09%
Medicare – FFS	513	10.77%	523	10.67%	523	10.67%
Medicare - MC	958	20.10%	977	19.93%	977	19.93%
Commercial – FFS	2,287	48.00%	2,277	46.44%	2,277	46.44%
Private Pay	8	0.17%	8	0.16%	8	0.16%
Charity	0	0.00%	99	2.02%	99	2.02%
All Other	<u>408</u>	<u>8.56%</u>	<u>416</u>	<u>8.48%</u>	<u>416</u>	<u>8.48%</u>
Total	4,765	100%	4,903	100%	4,903	100%

Lease Agreement

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

Date:	August 2, 2017
Premises:	16 Maxwell Drive, Clifton Park, 12065
Landlord:	Northside Partnership, LLC
Tenant:	Clifton Park ASC, LLC
Term:	10 years Renewal, three (3) 5-year terms
Rent:	\$127,982 (\$10,665.13 monthly). Rent increases 10% every 5 years
Provisions:	Tenant is responsible for taxes, insurance, utilities, and maintenance.

The Department has previously approved this arms-length lease.

Amended and Restated Administrative Service and Billing Agreement

The applicant has submitted an executed administrative service and billing agreement; the terms are summarized below:

Date:	December 13, 2024
Operator:	Clifton Park ASC, LLC
Contractor:	OrthopedicsNY, LLP
Services Provided:	Provide financial management services, including budget preparation, bookkeeping, bank account reconciliation, accounts payable, accounts receivable management, and economic analysis. Provide monthly reports of revenue/expense with budget variance analysis for review. Establishing, monitoring, and presenting key performance indicators monthly. Generate required financial and operational reports, including DOH/SPACS data files, pool reports, and cost reporting. Provide support for the Operator's maintenance of its EHR and Practice Management Software system. Establish and maintain the Operator's IT network infrastructure, including security procedures—aid Operator concerning human resources management and recruitment, interviewing, and evaluating staffing candidates, and supervising, coordinating, and facilitating the performance of the Operator's annual strategic planning functions for the Center, including a yearly governing body meeting. The parties mutually agree in writing to carry out other functions.
Term:	20 years with automatic ten (10) year renewal
Fee:	\$224,000 per year (\$18,666.66 per month), after the first 12 months, the parties will establish a monthly fee for the next six months

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law with concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 13, 2025, the facility had no outstanding Medicaid overpayment liabilities.

Outside Manager Agreement – Clifton Park ASC, LLC

The applicant has submitted an executed Outside Manager Agreement as summarized below:

Date:	January 15, 2025 (effective upon the Department's approval)
Operator:	Clifton Park ASC, LLC
Outside Manager:	David Fitzgerald
Services:	The Manager shall devote time to the Company as is reasonably necessary for performing his duties. Shall have the right to vote on all matters presented to the Company's Board of Managers and shall act in good faith and in the Company's best interest. The Manager defers to OrthoNY on all issues that require Facility control.
Term:	3 years with automatic three (3) year renewal (each renewal to be approved by the Department)
Consideration; Reimbursement:	The manager shall have ongoing affiliation with OrthoNY and further professional development, education, and growth. The manager will be entitled to reimbursement from the Company for all reasonable and documented expenses incurred by the Manager in managing and conducting the business and affairs of the Company, provided all costs are incurred under the Company's policies, procedures, and budgetary limits.

The agreement provides that the facility operator will retain ultimate control in all of the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Unit Redemption Agreement

The applicant has submitted executed Unit Redemption Purchase Agreements as summarized below:

Date:	December 13, 2024
Purchaser:	Clifton Park ASC, LLC
Seller:	William O'Connor, M.D.
Sold:	William O'Connor, M.D., will sell 6.667% of his Clifton Park ASC, LLC membership.
Consideration:	\$450,000 the current 14 individual owners of OrthoNY ASC Holdings, LLC., at \$32,142.86 each (14 X \$32,142.86 = \$450,000)

BFA Attachment A, Summary of members' net worth, shows sufficient resources to meet the obligation

OrthoNY Master ASC Holdings, LLC Unit Purchase Agreements

The applicant has submitted five (5) executed OrthoNY Master ASC Holdings, LLC Unit Purchase Agreements as summarized below:

Dates:	January 15, 2025, February 5, 2025, and February 10, 2025
Purchaser:	Adam Brod, M.D.; Kevin Emr, M.D.; Stefanos Haddad, M.D.; Andre Johnson, M.D. and Michael Okoli, M.D.
Seller/Company:	OrthoNY Master ASC Holdings, LLC
Purchase:	Each will purchase a 2.632% interest in OrthoNY Master ASC Holding, LLC.
Purchase Price:	Each has placed \$400,000 in escrow.

Amended and Restated OrthoNY Master ASC Holdings, LLC Unit Purchase Agreement
The applicant has submitted one (1) executed amended and restated OrthoNY Master ASC Holdings, LLC Unit Purchase Agreement as summarized below:

Date:	December 31, 2024
Purchaser:	Mark Coseo, M.D.
Seller/Company:	OrthoNY Master ASC Holdings, LLC
Purchase:	Purchaser previously agreed to purchase a 3.03% interest in OrthoNY Master ASC Holdings, LLC. The Company amended the agreement to sell a 2.632% interest in OrthoNY Master ASC Holdings, LLC.
Purchase Price:	\$400,000 has been placed in escrow

Contribution, Exchange, and Distribution Agreement - OrthoNY Master ASC Holdings, LLC (aka ASC Holdings)

The applicant has submitted an executed Contribution, Exchange and Distribution Agreement- OrthoNY Master ASC Holdings, LLC (relates to CON 251118, 251131, and 251147) as summarized below:

Date:	December 13, 2024
Contributors:	OrthoNY Master ASC Holdings, LLC – Members Contribution Matrix
Company:	OrthoNY Master ASC Holdings, LLC
Contributed Equity:	CON 251118 Executive Woods Ambulatory Surgery Center, LLC (EWASC) CON 251131 Clifton Part ASC, LLC (CPASC) CON 251147 Everett Road ASC, LLC (ERASC)
Agreed Value of Capital Contributions	\$3,780,202.97 from 32 physician members ($\$3,780.97 \times 32 = \$120,966,495$)
Cash Payments:	OrthoNY Master ASC Holdings, LLC will pay \$223,777.55 to 14 CPASC contributor physician members, totaling \$3,132,885. ($\$223,777.55 \times 14 = \$3,132,885$)
Funded:	All 38 proposed OrthoNY Master ASC Holdings, LLC members will share equally in funding the \$3,132,885 to the 14 CPASC contributor owners. Each will pay \$82,444.34 ($38 \times \$82,444.34 = \$3,132,885$)

BFA Attachment A, Summary of members' net worth, shows sufficient resources to meet the obligation.

Contribution, Exchange, and Distribution Agreement – Orthopedicsny, LLP (aka OrthoNY)

The applicant has submitted an executed Contribution, Exchange and Distribution Agreement- OrthopedicsNY, LLP (relates to CON 251118, 251131, and 251147) as summarized below:

Date:	December 13, 2024
Contributors:	OrthopedicsNY, LLP – Members Contribution Matrix
Company:	OrthopedicsNY LLP
Contributed Equity:	CON 251118 Executive Woods Ambulatory Surgery Center, LLC (EWASC) CON 251131 Clifton Part ASC, LLC (CPASC) CON 251147 Everett Road ASC, LLC (ERASC)
Agreed Value of Capital Contributions	\$1,260,067.66 from 32 physician members ($\$1,260,067.66 \times 32 = \$40,322,165$)
No Cash Payments (Value assigned for tax purposes and accounting):	OrthoNY is paying \$756,785.07 to 32 physician members for a total \$24,217,123 ($\$756,785.07 \times 32 = \$24,217,123$)

Capability and Feasibility

There are no project costs or service charges associated with this application. The Center will pay Dr. O'Connor \$450,000 to redeem his 6.667% membership interest in Clifton Park ASC, LLC. Six (6) new physician members will each pay \$400,000 for 2.632% membership in OrthoNY Master ASC Holdings LLC. Their payments are held in escrow. The applicant submitted two (2) contribution, exchange and distribution agreements, one for OrthoNY Master ASC Holding members and one for Orthopedics NY LLP. These agreements account for the current members of the OrthoNY's equity contribution into the new member organizations. There was a cash value assigned to these equity contributions, but no cash changed hands, and the cash value was used solely for bookkeeping purposes.

The working capital requirement is estimated at \$2,013,677 based on two months of first-year expenses. Funding will be met with equity from the operations and, if necessary, from its members. BFA Attachment A, Net Worth Statement of Proposed Members, and BFA Attachment H, 2023 Certified Financial Statements and December 31, 2024, Internal Financial Statement – Clifton Park ASC, LLC, show sufficient resources to meet the equity requirements.

The submitted budget projects a net income of \$3,831,760 and \$3,667,557 in Year One and Year Three, respectively. The budget appears reasonable.

BFA Attachment H shows a positive working capital position, positive net asset position, and a net income of \$4,431,595 in 2023 and a \$9,011,672 in 2024.

BFA Attachment G, Clifton Park ASC, LLC Pro Forma Balance Sheet shows operations will start with \$2,648,132 in members' equity as of the first day of operations.

Conclusion

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

Attachments

BFA Attachment A	Clifton Park ASC, LLC – Net Worth of Proposed Members
BFA Attachment B	Clifton Park ASC, LLC – Current Members
BFA Attachment C	OrthoNY Master ASC Holdings, LLC – Proposed 38 Members Direct Ownership Interest
BFA Attachment D	OrthoNY Master ASC Holdings, LLC – Proposed 38 Members Indirect Ownership Interest in Clifton Park ASC, LLC
BFA Attachment E	OrthopedicsNY LLP - Proposed 33 Members Direct Ownership Interest
BFA Attachment F	OrthopedicsNY LLP - Proposed 33 Members Indirect Ownership Interest in Clifton Park ASC, LLC
BFA Attachment G	Clifton Park ASC, LLC - Pro Forma
BFA Attachment H	Clifton Park ASC, LLC – 2023 Certified Financial Statement and December 31, 2024, Internal Financial Statement.
BFA Attachment I	Clifton Park ASC, LLC – Current and Post-Transaction Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% of ownership interest from 15 individual physician members to two new corporate members with no change of operator, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251131 E

FACILITY/APPLICANT:

OrthoNY Surgical Suites

APPROVAL CONTINGENT UPON:

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

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

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Department of Health

Public Health and Health Planning Council

Project # 251068-B Tri-Med Health Pavilion

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** February 14, 2025

Executive Summary

Description

Tri-Med Health Pavilion LLC (the Center), an existing New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) in leased space at 14-25 Central Avenue, Far Rockaway (Queens County). The leased space is in an existing mixed-use building and will be comprised of nineteen (19) exam rooms, one (1) phlebotomy lab, seven (7) treatment rooms, one (1) nurse office, waiting areas, offices, storage, and staff areas. The Center will be certified for Primary Care, Other Medical Specialties, and Podiatry O/P. Upon approval, the Center will be known as Tri-Med Health Pavilion.

Ownership of the operations is as follows:

Proposed Operator	
Tri-Med Health Pavilion LLC	
Proposed Members:	Ownership %
Vinod Sinha	50.00%
Nalini Sinha	50.00%
Total	100.00%

The proposed members have interests in a licensed home care services agency and a social adult day care in the same service area.

Vishal Sinha, M.D., will serve as the Medical Director. The applicant is negotiating a transfer agreement for backup and emergency services with St John's Episcopal Hospital South Shore, 0.6 miles (5 minutes travel time) from the proposed Center.

OPCHSM Recommendation Contingent Approval

Need Summary

The applicant projects 58,357 visits in Year One and 110,225 visits in Year Three, with 62% Medicaid and 3% Charity Care in Year One and Year Three.

Program Summary

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

Financial Summary

The total project cost of \$4,741,252 will be met with \$4,583,369 in landlord equity and \$157,883 in proposed members' equity.

Budget:	Year One	Year Three
Revenues	\$7,545,850	\$14,501,144
Expenses	\$6,603,968	\$10,921,055
Net Income / (Loss)	\$941,882	\$3,580,089

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **December 30, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 30, 2025**, and construction must be completed by **September 30, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Tri-Med Health Pavilion LLC (the Center) is requesting to establish and construct an Article 28 Diagnostic and Treatment Center in leased space at 14-25 Central Avenue, Far Rockaway, New York 11691 (Queens County). Upon approval of this application, the site will be known as Tri-Med Health Pavilion. The Center will be certified for Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P.

Background and Analysis

The Primary Service Area for the Center will be within the Queens Community District 14 – The Rockaways Public Use Microdata Area (PUMA). The Center will be located within Zip Code 11691, Far Rockaway in Queens County. The location is within a Health Professional Shortage Area for Primary Care. The population of Queens County is projected to increase to 2,565,268 by 2030, based upon the Cornell Program of Applied Demographics' estimates, an increase of 10.09%. Demographics for the primary service area (zip code and Queens Community District) are noted below, including a comparison with the county and New York State.

Demographics	Zip Code - 11691	Queens Community District – 14	Queens County	New York State
Total Population-2023 Estimate	68,704	130,570	2,330,124	19,872,319
Hispanic or Latino (of any race)	25.7%	22.7%	27.9%	19.6%
White (non-Hispanic)	23.7%	34.0%	23.6%	53.4%
Black or African American (non-Hispanic)	40.4%	34.3%	16.5%	13.6%
Asian(non-Hispanic)	4.0%	3.9%	25.9%	8.8%
Other (non-Hispanic)	6.2%	5.1%	6.1%	4.6%

Source: American Community Survey (2023 5-year Estimates Data Profiles)

In 2023, 93.3% of the population of Queens Community District – 14 – The Rockaways PUMA, NY had health coverage as follows:

Employee plans	38.5%
Medicaid	34.4%
Medicare	10.2%
Non-group plans	9.71%
Military or VA plans	0.48%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	24%	24%
Medicare	11%	11%
Medicaid	62%	62%
Charity Care	3%	3%

Source: Applicant

The applicant projects 58,357 visits in Year One and 110,225 visits in Year Three. The applicant is proposing to provide primary health and other medical specialties, which will include, but are not limited to, infectious disease, pulmonary, endocrine, cardiology, and behavioral health. These services were selected to fit within the designated program space of the facility and to function at a level that would help alleviate the burden of need for health services in the area.

The Center will be operational 5 days per week initially, Monday through Friday, 8:00 am – 6:00 pm. Hours of operation will increase as demand warrants, increasing operational days to 6 per week, adding Saturday from 8:30 am to 6:00 pm.

The applicant is in negotiations to maintain a transfer and affiliation agreement with St John's Episcopal Hospital South Shore, 327 Beach 119th St, Far Rockaway, NY 11691, 0.6 miles and 5 minutes away. This is also the nearest hospital to the proposed facility.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2022 related to this application, indicating that the zip code where the facility will be situated in the service area (Queens Community District – 14, The Rockaways) has higher PQI rates than Queens County and New York State.

Hospital Admissions per 100,000 Adults			
PQI Name	Zip Code 11691	Queens County	New York State
Diabetes Short-Term Complications	170	59	67
Diabetes Long-Term Complications	195	106	116
Chronic Obstructive Pulmonary Disease or Asthma	505	190	238
Hypertension	177	91	65
Heart Failure	560	322	359
Bacterial Pneumonia	119	47	92
Uncontrolled Diabetes	133	54	46
Urinary Tract Infection	186	95	103
Prevention Quality Overall Composite	1,878	918	1,021

Conclusion

Approval of this project will allow the center to carry out its efforts to serve the residents of Queens Community District-14 and help alleviate the burden of need for health services in The Rockaways, Queens County.

Program Analysis

Project Proposal

Proposed Operator	Tri-Med Health Pavilion LLC
Site Address	14-25 Central Avenue Far Rockaway, NY 11691 (Queens)
Specialties	Medical Services - Primary Care Medical Services - Other Medical Specialties Podiatry O/P
Hours of Operation	Monday through Friday, 8 AM to 6 PM, extending to a sixth day on Saturday from 8:30 AM to 6:00 PM as volume or needs of the community dictate.
Staffing (1st Year / 3rd Year)	23.25 FTEs / 43.05 FTEs
Medical Director(s)	Vishal Sinha, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by: St. John's Episcopal Hospital South Shore: 0.6 miles/5 minutes.

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

Position	Year One	Year Three
Management and Supervision	1.25	1.25
Physicians	5.0	9.5
Physicians' Assistants/ Medical Assistants	8.0	15.2
Nurse Practitioners	2.0	3.8
Social Workers and Psychologist	1.0	1.9
Infection Control, Environment	3.0	5.7
Clerical and Other Administrative	3.0	5.7
Totals	23.25	43.05

Character and Competence

Members of Tri-Med Health Pavilion LLC:

Name	Ownership
Nalini Sinha	50%
Vinod Sinha	50%

Dr. Vishal Sinha will serve as the medical director. Dr. Sinha has worked as a Diagnostic and Interventional Radiologist at Vantage Medical Associates, P.C. since July 2024 and as the President of Tri-Med Home Care Services since July 2024. Dr. Sinha graduated from the University of Miami with a Bachelor of Science in Biology, Chemistry, and Mathematics in 2013 and from the University of Miami Miller School of Medicine with a Doctor of Medicine in May 2018. Dr. Sinha completed an Internship in General Surgery at New York Presbyterian Hospital in June 2019 and completed an Integrated Diagnostic Radiology/Interventional Radiology residency at New York Presbyterian, Memorial Sloan Kettering, and Hospital for Special Surgery in June 2024.

The following is a court case naming Dr. Sinha:

SCHMIDT, NORA vs. THE NEW YORK AND PRESBYTERIAN HOSPITAL et al (SINHA M.D., VISHAL KUMAR)/ New York Supreme Court/805385/2021/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case occurred when Dr. Sinha was an intern and was not the decision maker, and did not play a significant role in the care of the patient. The applicant expects to be dismissed from the case.

Nalini Sinha has been the Senior Vice President of Tri-Med Staffing, Inc., and Tri-Med Home Care Services, Inc. since 2012. Nalini Sinha has also been the President and Chief Executive Officer of Tri-Med Social Adult Day Services, Inc., since 2014. Nalini Sinha graduated from Lucknow University with a master's degree in 1982 and from Conestoga College with a book-keeping degree in 1984.

Vinod Sinha is a senior-level operations manager with experience in delivering health care services. Vinod Sinha is the Founder and Chief Executive Officer of Tri-Med Home Care Services, Inc., operating since 2013, the co-founder of Tri-Med Social Adult Day Services Inc., since 2014, and was previously the Executive Administrator for South Island Medical Associates, P.C. from 1977 to 2014. Vinod Sinha graduated from Phoenix University with a Master of Business Administration in 2004.

The following are court cases related to Tri-Med Home Care Services, Inc:

MELENDEZ, MAYRA vs. TRI-MED HOME CARE SERVICES, INC. et al/Kings Supreme Court/ 504552/2020/ Tort-Other

Per the applicant, there is currently a motion to dismiss pending for the judge's action.

SODHI, JITENDRA S. vs. TRI-MED HOME CARE SERVICES, INC. et al/Queens Supreme Court/ 704924/2022/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, Tri-Med did not provide any personal care to the plaintiff in this case, as this relationship was part of their CDPAP program.

Compliance with Applicable Codes, Rules, and Regulations

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

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost is estimated at \$4,741,252, broken down as follows:

New Construction	\$1,196,650
Renovation & Demolition	2,671,600
Design Contingency	96,706
Construction Contingency	193,413
Architect/Engineering Fees	300,000
Other Fees	125,000
Movable Equipment	129,960
Application Fee	2,000
Additional Processing Fee	<u>25,923</u>
Total Project Cost	\$4,741,252

The financing for this project will be as follows:

Landlord Equity	\$4,583,369
Members' Equity	<u>157,883</u>
Total	\$4,741,252

BFA Attachment A, Net Worth Statement of Proposed Members of Tri-Med Health Pavilion LLC, shows sufficient resources to meet the equity requirements.

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for Year One and Year Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$225.00	\$1,312,875	\$229.50	\$2,529,549
Commercial MC	\$225.00	\$1,838,250	\$229.50	\$3,541,415
Medicare FFS	\$106.78	186,972	\$108.92	360,184
Medicare MC	\$106.78	498,449	\$108.92	960,418
Medicaid FFS	\$106.78	997,005	\$106.78	1,883,172
Medicaid MC	\$106.78	2,866,296	\$108.92	5,522,348
Less: Bad Debt		<u>(153,997)</u>		<u>(295,946)</u>
Total Revenue		\$7,545,850		\$14,501,144
Expenses:				
Operating	\$88.83	\$5,183,847	\$85.85	\$9,462,716
Capital	<u>24.34</u>	<u>1,420,121</u>	<u>13.23</u>	<u>1,458,339</u>
Total	\$113.17	\$6,603,968	\$99.08	\$10,921,055
Net Income / (Loss)		<u>\$941,882</u>		<u>\$3,580,089</u>
Total Visits		58,357		110,224
Cost per Visit		\$113.16		\$99.08

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

<u>Payor:</u>	<u>Years One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	5,835	10.00%	11,022	10.00%
Commercial MC	8,170	14.00%	15,431	14.00%
Medicare FFS	1,751	3.00%	3,307	3.00%
Medicare MC	4,668	8.00%	8,818	8.00%
Medicaid FFS	9,337	16.00%	17,636	16.00%
Medicaid MC	26,843	46.00%	50,703	46.00%
Charity Care	<u>1,753</u>	<u>3.00%</u>	<u>3,307</u>	<u>3.00%</u>
Total	58,357	100.00%	110,224	100.00%

The following is noted with respect to the submitted budget:

- The number and mix of staff were based on the operations of existing Article 28 D&TCs and a review of existing AHCF-1s.
- Revenue projections are based on the Freestanding APG Base Rates using full APG reimbursement as obtained from the New York State Department of Health's website.
- The Medicaid Managed Care rate is based on the Medicaid Fee-For-Service rate and excludes the capital component.
- Medicaid APG base rate has been used as the rate for the Medicaid fee-for-service population in the budget projections. Operating expenses are based on the experience of the proposed physician members and a review of AHCF-1 cost reports for existing and operating Article 28 diagnostic and treatment centers. Utilization is based on a review of AHCF-1 cost reports for existing and operating Article 28 diagnostic and treatment centers.
- The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The Center developed a financial assistance policy to be utilized when operational.

Lease Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied, summarized below:

Date	April 29, 2025
Premises:	1425 Central Avenue, Far Rockaway, 11691
Landlord:	1425 Central Ave Corp.
Tenant:	Tri-Med Health Pavilion LLC
Term:	10 years
Rental:	Base rent for total leased space is \$945,996 per year (\$75,833 per month) for the 1st year. Rent will increase by 2% of the base year rent for years 2 - 10.
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance.

The applicant has submitted an affidavit stating that the lease between the property owner and the lessee is a non-arm's-length arrangement due to common ownership. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Capability and Feasibility

The total project cost of \$4,741,252 will be met with \$4,583,369 in landlord equity and \$157,883 in members' equity. Working capital requirements are estimated at \$1,820,176, based on two months of third-year expenses, and will be funded with members' equity. BFA Attachment A presents the members' personal net worth statements, which indicate sufficient resources overall to fund the equity requirements.

The submitted budget projects a net income of \$941,882 and \$3,580,089 during Year One and Year Three of operations, respectively. The budget appears reasonable.

BFA Attachment B, Pro-Forma Balance Sheet - Tri-Med Health Pavilion LLC, shows the operation will have \$1,950,136 in members' equity on the first day of operations.

Conclusion

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

Attachments

Supporting Data

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Members of Tri-Med Health Pavilion LLC
BFA Attachment B	Pro-Forma Balance Sheet – Tri-Med Health Pavillion LLC
BFA Attachment C	Tri-Med Health Pavilion LLC Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center at 14-25 Central Avenue, Far Rockaway, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251068 B

FACILITY/APPLICANT:

Tri-Med Health Pavilion

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **December 30, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 30, 2025**, and construction must be completed by **September 30, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 251106-B
Accelerated Care Inc.

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** March 11, 2025

Executive Summary

Description

Accelerated Care Inc., an existing New York State not-for-profit corporation, is seeking to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) in leased space at 1 Wadsworth Terrace, New York (New York County). The D&TC will be certified for Primary Care, Other Medical Specialties, including cardiology, dermatology, urology, and podiatry. The applicant intends to seek certification as a Federally Qualified Health Center (FQHC) after commencing operations.

Edward Shuster, M.D. will serve as the Medical Director. Accelerated Care Inc. is currently negotiating a transfer and affiliation agreement.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 17,850 visits in Year One and 18,900 visits in Year Three, with Medicaid at 70.0% and Medicare at 5.0%.

Program Summary

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

Financial Summary

The total project cost is \$4,674,388. The landlord will provide a loan of \$3,500,000 for construction, which will be paid back as additional rent over a ten-year period. The equipment purchases of \$706,950 will be financed from HTD 2, with a 12% interest rate and 7-year term. The remaining \$467,438 will be contributed from Shaarei Refuah Inc., a not-for-profit organization.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,656,463	\$5,020,625
Expenses	<u>3,860,485</u>	<u>4,186,721</u>
Net Income/(Loss)	(\$204,022)	\$183,904

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan agreement, acceptable to the Department. [BFA]
3. Submission of an executed building lease, acceptable to the Department. [BFA]
4. Submission of an executed subvention loan agreement, acceptable to the Department. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **May 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **February 1, 2027**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the entities will operate at two separate times; there will be no overlap in hours; the clinical space must be used exclusively for the approved purpose; medical records will be separately maintained for each entity and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Accelerated Care Inc., an existing New York State not-for-profit corporation, is requesting to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC, the "Center"). Upon approval, Accelerated Care Inc. will change its name to Accelerated Health Inc. The D&TC will be in the cellar and first floors of a newly constructed building at 1 Wadsworth Terrace, New York (New York County), New York 10040. It is the intent of the applicant to seek certification as a Federally Qualified Health Center after commencing operations.

Background & Analysis

The applicant is located in New York County with a service area serving zip codes 10032, 10033, 10034, and 10040, representing the Washington Heights, Fort George, and Inwood neighborhoods. The facility will be within a Health Professional Shortage Area for Dental, Mental, and Primary Care Health, and is part of a Medically Underserved Area.

The population of New York County is estimated to increase to 1,727,631 by 2030, per projection data from the Cornell Program on Applied Demographics, an increase of 6.1%. Demographics for the service area are noted below, including a comparison with New York State:

Demographics	Service Area (Zip Codes 10032, 10033, 10034, 10040)	New York County	New York State
Total Population – 2023 Estimate	189,808	1,627,788	19,872,319
Hispanic or Latino (of any race)	65.35%	24.30%	19.60%
White (non-Hispanic)	21.23%	46.30%	53.40%
Black or African American (non-Hispanic)	6.73%	12.50%	13.60%
Asian (non-Hispanic)	3.45%	12.30%	8.80%
Other (non-Hispanic)	3.17%	4.60%	4.60%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

In addition to serving the general population, the proposed D&TC will improve access to medical services for residents of two nearby Residential Health Care Facilities (RHCs). The center will be located 0.5 miles from Fort Tryon Center for Rehabilitation and Nursing, a 205-bed RHC, and 0.4 miles from Isabella Geriatric Center, a 705-bed RHC. According to the applicant, due to the limited existing D&TC resources in the proposed service area, residents of these RHCs often have difficulty accessing medical visits promptly when needed.

In 2023, 95.7% of the population of New York County had health coverage as follows:

Employer plans	52.4%
Medicaid	19.3%
Medicare	11.0%
Non-group plans	12.8%
Military or VA plans	0.284%

Source: Data USA

The following data represents the public health coverage of the primary service area:

Zip Code	10032	10033	10034	10040
Medicaid Coverage Alone	27.00%	25.10%	24.00%	26.40%
Medicare Coverage Alone	3.90%	2.90%	4.50%	4.80%

Source: 2023 American Community Survey (5-Year Estimates); Table S2704

The number of projected visits is 17,850 in Year One and 18,900 visits in Year Three, with Medicaid at 70.0% and Medicare at 5%. There is currently only one other D&TC located in zip code 10040 that provides primary care services, the New York Neuro & Rehab Center, located 0.4 miles away.

The table below shows the projected payor source utilization for Years One and Year Three.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
	Inpatient	
Medicare	5.00%	5.00%
Medicaid	70.00%	70.00%
Private Pay	10.00%	10.00%
Other	15.00%	15.00%

Source: Applicant

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on adult rates for 2022 related to this application.

Hospital Admissions Per 100,000 Adults					
PQI Name	10032	10033	10034	10040	New York State
Prevention Quality Overall Composite	1,689	1,271	1,366	1,401	1,021

Source: HealthData.NY.Gov (values have been rounded)

The facility will be open 9 am to 5 pm Monday through Friday, and Telehealth services will be available 7 days a week from 7 am to 9 pm. The Center expects to enter into a Patient Transfer Agreement with a hospital for backup services but does not have one set up at this time.

Conclusion

Approval of this project will provide improved access to care in an outpatient setting for the residents of Washington Heights, Fort George, and Inwood neighborhoods.

Program Analysis

Project Proposal

Proposed Operator	Accelerated Care Inc.
Site Address	1 Wadsworth Terrace, New York, NY 10040 (New York County)
Specialties	Medical Services- Primary Care Medical Services- Other Medical Specialties Podiatry O/P
Hours of Operation	Monday through Friday, from 9:00 A.M. to 5:00 P.M., with additional evening and weekend hours to be added as needed. Telehealth services will also be available from 7:00 A.M. to 9:00 P.M., seven (7) days a week.
Staffing (1st Year / 3rd Year)	14.50 FTEs / 16.51 FTEs
Medical Director(s)	Edward Shuster, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	To be determined

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

Position	First Year	Third year
Management and Supervision	2.00	2.00
Aides, Orderlies & Attendants	3.50	3.71
Physicians	1.00	1.50
Nurse Practitioners	2.50	3.50
Social Workers and Psychologist	1.00	1.06
Clerical and Other Administrative	2.00	2.12
Case Manager	1.00	1.06
SUD Provider	1.00	1.06
Podiatrist	0.50	0.50
Totals	14.50	16.51

Membership Structure

Member	Position Held
Sara Kagan	Board Member
Florence Kramer	Board Member, Chairperson
Mark Schuster	Board Member

Character and Competence

Edward Shuster, M.D. will be the medical director of the facility. Dr. Shuster has worked as an in-house physician at Fountain View Retirement Community since 2000 and has also worked at Helen Hayes Hospital as a consultant internist at the rehabilitation hospital since 2020. Dr. Shuster graduated from Brooklyn College in 1984 with a focus in pre-med and from New York Medical College with a Doctor of Medicine in 1988. Dr. Shuster completed an Internal Medicine Residency at Maimonides Medical Center in 1992.

Sara Kagan currently works as a Supervisor/Case Manager at Amudim Community Resources providing short term counselling to parents of children struggling with addiction and mental health issues as well as victims of trauma and those suffering from addictions, mental health issues and/or eating disorders to provide support, case management, psychoeducation, short term counseling and referrals. Prior to this, Sara Kagan worked at Yeled V'Yalda Head Start Program from 2013 to 2015 as a Mental Health Consultant. Sara Kagan graduated from Touro College with a bachelor's degree in 2003 and from Brooklyn College with a master's in education in 2010.

Florence Kramer is a Pediatric Physician's Assistant currently working for CHEMED Health Center since July 2023. Prior to this, Florence Kramer worked as a Physician's Assistant for Pediatric Affiliates from January 2011 to June 2023. Florence Kramer graduated from Touro College with a bachelor's degree in 2008.

Mark Schuster has worked as a Supervising Physician Assistant at Monsey Urgent Care Center since 2016. Prior to this, Mark Schuster worked as a Physician Assistant at Long Island Jewish Hospital Emergency Room from 2015-2023, and as a Physician Assistant at Queens General Hospital Emergency Room from 2014-2018. Mark Schuster graduated from Touro College with a Bachelor of Science in Biology in 2011 and from SUNY Downstate Medical Center with a Bachelor of Science in Physician Assistant Studies in 2014.

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

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and moveable equipment, is estimated at \$4,674,388, further broken down as follows:

Renovation & Construction	\$2,916,667
Design Contingency	\$291,666
Construction Contingency	\$291,666
Architect Fees/Engineering Fees	\$233,334
Construction Manager Fees	\$145,834
Other Fees	\$53,000
Movable Equipment	\$714,663
Total Basic Cost of Construction	\$4,646,830
Application Fee	\$2,000
Processing Fee	<u>\$25,558</u>
Total Project Cost with CON Fees	\$4,674,388

The project is estimated at \$4,674,388 and will be funded as follows:

Landlord Bank Loan (Levon Capital LLC to Cozy Terrace LLC)	\$3,500,000
Equipment will be financed by HDT2 LLC (LOI sent to the DOH)	\$706,950
Equity contribution from Shaarei Refuah, Inc.	<u>\$467,438</u>
Total	\$4,674,388

The applicant submitted a letter attesting that there is no relationship between the applicant and Shaarei Refuah, Inc. or the landlord. Shaarei Refuah, Inc has a commitment and desire to improve the access to health care services and health outcomes.

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for Years One and Year Three, summarized below:

	<u>First Year</u>		<u>Third Year</u>	
Revenue - Outpatient	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Revenue</u>
Medicare MC	\$150.00	\$133,950	\$150.00	\$141,750
Medicaid FFS	\$262.27	3,277,063	\$300.00	3,969,000
Private Pay	\$100.00	178,500	\$100.00	189,000
All Other	\$25.00	66,950	\$25.00	70,875
*FQHC Rev.	-	-	-	\$650,000
Total Rev.	-	<u>\$3,656,463</u>	-	<u>\$5,020,625</u>
Expenses:				-
Operating	\$123.37	\$2,202,250	\$133.37	\$2,520,710
Capital	\$92.89	1,658,235	\$88.15	1,666,011
Total Operating Exp.	\$216.26	\$3,860,485	\$221.52	\$4,186,721
Operating Income		<u>(\$204,022)</u>		<u>\$833,904</u>
Cost per Visit		\$216.26		\$221.52

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

	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicare MC	893	5.00%	945	5.00%
Medicaid FFS	12,495	70.00%	13,230	70.00%
Private Pay	1,785	10.00%	1,890	10.00%
All Other	2,678	15.00%	2,835	15.00%
Total	17,851	100.00%	18,900	100.00%

- The basis of revenues, expenses, and projected utilization is based on the existing providers in the proposed service area. The operating budget projects they will operate at 85% of capacity (17,850 visits) in the Year One and 90% of capacity (18,900 visits) by the Year Three.
- The applicant projects 14.50 FTEs in Year One and 16.61 FTEs in Year Three.
- The applicant expects to have obtained FQHC status by Year Three of operations.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site which is summarized below:

Premises:	1 Wadsworth Terrace – approx. 9,195 sq. ft.
Lessor:	Cozy Terrace, LLC
Lessee:	Accelerated Health Inc.
Term of Lease:	10-Years
Rental Amount:	Year One \$55.00 sq. ft. - Annual \$505,725 Year Two \$56.38 sq. ft. - Annual \$518,414 Year Three \$57.79 sq. ft. - Annual \$531,379 Year Four \$45.38 sq. ft. - Annual \$544,620 Year Five \$60.71 sq. ft. - Annual \$558,228 Year Six \$62.23 sq. ft. - Annual \$572,205 Year Seven \$63.79 sq. ft. - Annual \$586,549 Year Eight \$65.38 sq. ft. - Annual \$601,169 Year Nine \$67.01 sq. ft. - Annual \$616,157 Year Ten \$68.89 sq. ft.- Annual \$631,605
Additional Rent:	Landlord has provided a letter of interest from Levon Capital in the amount of \$3,500,000 to loan COZY Terrace LLC the same amount at the same term and interest on order for the Lessee to fund the fit-out for this project. This amount will be paid back at \$569,608 annualized for a term of 10-years at a rate of 10%.
Provisions:	Utilities are included in base rent, and the landlord will charge for the construction costs 10% per annum after three (3) months the center commences operations over 120 months for the \$3,500,000. An extension clause is in the loan application for 2 (6) month terms which if exercised will increase the interest rate by (1%).

The applicant has provided two (2) letters of rent reasonableness from licensed NYS Realtors. Additionally, an executed affidavit has been submitted stating the lease is an arm's length agreement as the Lessor and Lessee are not related.

Equipment Purchase

The applicant has submitted a letter of interest agreement to financing the equipment loan which is summarized below:

Borrower:	Accelerated Care, Inc.
Lender:	HTD 2, LLC
Loan Amount:	\$706,950
Term:	7-Years
Interest Rate:	Estimated at 12% and could change depending on market conditions when executed.
Provisions:	Letter of interest is for up to \$1,000,000, however the amount needed is \$706,950 and the interest rate is estimated. The monthly payment with interest is projected to be \$154,905 annually.

There is no relationship between HDT 2, LLL and the applicant.

Subvention Loan Agreement

The applicant has submitted a draft subvention agreement for the working half of the working capital portion of the project:

Subvention Loan Grantor:	Shaarei Refuah's, Inc.
Subvention Loan Grantee:	Accelerated Care, Inc.
Amount:	\$348,893
Term:	5-Years
Rate:	8.5%

There is no relationship between Accelerated Health, Inc, Shaarei Refuah, Inc. nor the landlord, COZY Terrace LLC.

Capability and Feasibility

The total project cost is \$4,674,388. \$3,500,000 will be funded with a landlord loan from Levon Capital and paid back through extra lease payments for a 10-year term at an estimated interest rate of 10%. \$706,950 will be financed for equipment costs through a loan from HTD2, LLC. The applicant provided a letter of interest, stating terms at approximately 12% interest for a seven (7)-year term. The remaining \$467,439 will be funded through a contribution from Shaarei Refuah.

The working capital requirement is estimated at \$697,787, based on two months of third year expenses, and will be funded with a \$348,894 equity contribution from Shaarei Refuah, Inc. The remainder, \$348,893 will be covered through a subvention loan from Shaarei Refuah, Inc. with a 5-year term at 8.5% interest. BFA Attachment A, Bank Statement - Shaarei Refuah, Inc., indicates sufficient resources for the contribution and working capital working capital requirements.

The budget shows an operating loss of (\$204,022) in Year One and Net Income of \$833,904 in Year Three. The budget appears reasonable. Shaarei Refuah, Inc. submitted an affidavit stating that the corporation will cover the Year One loss through a contribution and provided a bank statement (BFA Attachment A) indicating sufficient resources to cover the loss.

Attachment B, Pro Forma Balance Sheet, indicates a net equity asset position of \$934,879 as of the first day of operations.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Bank Statement – Shaarei Refuah, Inc.
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 1 Wadsworth Terrace, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251106 B

FACILITY/APPLICANT:

Accelerated Care Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan agreement, acceptable to the Department. [BFA]
3. Submission of an executed building lease, acceptable to the Department. [BFA]
4. Submission of an executed subvention loan agreement, acceptable to the Department. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **May 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2026**, and construction must be completed by **February 1, 2027**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the entities will operate at two separate times; there will be no overlap in hours; the clinical space must be used exclusively for the approved purpose; medical records will be separately maintained for each entity and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 251114-E
Bronx Renal Services LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Bronx
Acknowledged: March 25, 2025

Executive Summary

Description

Bronx Renal Services, LLC d/b/a Bronx Kidney Care, an existing New York limited liability company, is seeking approval to become the established operator of St. Barnabas Hospital Hemodialysis Center, a 40-station end-stage renal dialysis extension clinic at 4451 Third Avenue, Bronx, New York (Bronx County). There will be no changes to services or the number of stations per this application.

The proposed members of Bronx Renal Services, LLC are as follows:

Proposed Owners of Bronx Renal Services, LLC	
Member	Ownership %
Miles Davis	1%
Raizy Davis	1%
Mandr BRC Holdings LLC	49%
BRC Holdings LLC	49%
Total	100%

Miles Davis is the Sole Member and Manager of Mandr BRC Holdings, LLC, and Raizy Davis, is the Sole Member and Manager of BRC Holdings LLC.

Dr. Bessy Suyin Flores Chang, who is Board-Certified in Internal Medicine and Nephrology, is the proposed Medical Director.

OPCHSM Recommendation
Contingent Approval

Need Summary

The facility currently sees 22,052 visits annually and expects 25,272 in Year One and 33,696 in Year Three, with 75% Medicare and 10% Medicaid.

Program Summary

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

Financial Summary

There is no project cost associated with this application. The purchase price of \$3,200,000 will be paid with \$2,240,000 in members' equity and a draft promissory note for \$960,000 between Bronx Renal, LLC and St. Barnabas Hospital with a 1-year term and a 5% interest rate.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,451,589	\$11,268,785
Expenses	<u>\$6,872,185</u>	<u>\$7,038,360</u>
Net Income	\$1,579,404	\$4,230,425

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease acceptable to the Department of Health. [BFA]
2. Submission of an executed promissory note acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

June 18, 2025

Need Analysis

Project Description

Bronx Renal Services is seeking approval for Bronx Renal Services LLC d/b/a Bronx Kidney Care to become the established operator of the existing 40-station SBH Hemodialysis Center, at 4451 Third Avenue, Bronx, New York 10457 (Bronx County). SBH Hemodialysis Center is an extension clinic of St. Barnabas Hospital. There will be no changes in services or the number of existing dialysis units through the approval of this project.

Background and Analysis

The primary service area for the facility remains Bronx County. The population of the county is estimated to increase to 1,604,168 by 2030 per projection data from the Cornell Program on Applied Demographics, an increase of 13.0%. The facility is in a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care, and is within a Medically Underserved Area.

Demographics	Bronx County	New York State
Total Population	1,419,250	19,872,319
Hispanic or Latino (of any race)	54.9%	19.6%
White (non-Hispanic)	8.8%	53.4%
Black or African American (non-Hispanic)	29.1%	13.6%
Asian (non-Hispanic)	4.0%	8.8%
Other (non-Hispanic)	3.2%	4.6%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

The population aged 65 and over was 13.9% of the total population in Bronx County in 2023. By 2030, Cornell PAD estimates the 65 and over cohort will be 16.4% of the total population, an increase of 2.5%. The non-white population percentage was 91.2%, which is significantly higher than the New York State percentage of 46.6%. The aged 65 and over population and the minority population are two groups most in need of end-stage renal dialysis services.

In 2023, 92.7% of the population in Bronx County had health coverage as follows.

Employer Plans	29.5%
Medicaid	43.4%
Medicare	7.06%
Non-Group Plans	12.3%
Military or VA	0.392%

Source: Data USA

The applicant's projected payor mix is below.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
	Outpatient	
Commercial	15.00%	15.00%
Medicare	75.00%	75.00%
Medicaid	10.00%	10.00%

Source: Applicant

The facility currently sees 22,052 visits annually and expects 25,272 in Year One and 33,696 in Year Three. The applicant plans to work with community leaders, religious leaders, and local groups to provide outreach and information about dialysis and the center.

The table below shows the nearby dialysis centers within 1.5 miles of the applicant.

	CMS Overall Quality Rating (as of 1/2025)	Number of Dialysis Stations	Distance to other Dialysis Centers
St. Barnabas Hospital-Hemodialysis	2	40	N/A
South Bronx Dialysis Center	4	20	5 min/0.6 miles
University Heights Dialysis	2	21	10 min/1.2 miles
Grand Concourse Dialysis Facility	3	27	9 min/1.3 miles
Citadel Renal Care LLC	1	15	12 min/1.5 miles
Beth Abraham Center for Renal Dialysis	N/A	24	13 min/2.4 miles

Source: CMS Compare, HFIS, and Google Maps

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on adult rates for 2022 related to this application.

Hospital Admissions per 100,000 Adults		
PQI Name	Bronx County	New York State
Diabetes Short-Term Complications	113	67
Diabetes Long-Term Complications	228	116
Uncontrolled Diabetes	103	46
Hypertension	134	65
Prevention Quality Overall Composite	1,697	1,021

Source: HealthData.NY.Gov (values have been rounded)

The applicant plans to continue offering services to residents in an area most in need of ESRD services.

Conclusion

There will be no change in the number of stations or the dialysis services provided as a result of this application.

Program Analysis

Project Proposal

Proposed Operator	Bronx Renal Services LLC
Doing Business As	Bronx Kidney Care
Site Address	4451 Third Ave, Bronx, NY 10457 (Bronx County)
Shift/Hours/Schedule	Monday to Friday from 6:30 AM-7:00 PM Saturday 6:30 AM- 12:30 PM
Approved Services	Renal Dialysis-Chronic O/P (40)
Staffing (1st Year/3rd Year)	37.50 FTEs/40.50 FTEs
Medical Director(s)	Bessy Suyin Flores Chang, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Proposed: St. Barnabas Hospital 305 ft./1 minute

There will be no programmatic changes, changes in stations or services as a result of this proposed change in ownership.

Character and Competence

The proposed members of Bronx Renal Services, d/b/a Bronx Kidney Care, are as follows:

Member Name	Ownership/Percentage	Title
Miles Davis	1%	Member /Manager
Raizy Davis	1%	Member /Manager
Mandr BRC Holdings LLC	49%	Member
BRC Holdings LLC	49%	Member

Mandr BRC Holdings LLC - sole member is Miles Davis.

BRC SB Holdings LLC - sole member is Raizy Davis

Miles Davis received a BS degree from Rabbinical College Bobover Yeshiva in 1995. Miles Davis has been managing member and CEO of Williamsburg Dialysis Center, Brooklyn New York since 2016, a Member of Quality Kidney Care, Queens New York since 2016, and Kings Harbor Dialysis Center Bronx, New York from 2002 to present where they performed project planning and feasibility research for a 9-station dialysis center project in a 720-bed skilled nursing facility, and project management. Additional duties include day-to-day operations, financial management, budgeting, reporting, human resources, reimbursement, auditing, quality oversight, policy and procedure implementation, compliance monitoring, environmental management, and bio-med rounds and auditing, Regulatory updates in-service, and implementation. Miles Davis discloses membership in the following facilities:

Kings Harbor Health Services, LLC: 2004 - present

Quality Kidney Care: 2016 - present

Williamsburg Dialysis Center: 2020 - present

Raizy Davis attended Touro College from 2007-2008 and is the owner and CFO of Geripro Dialysis Consultants DBA Renalliance Group, managing 20 dialysis centers in New York State. Raizy Davis is currently employed at Kings Harbor Dialysis Center. Duties Raizy Davis discloses membership in the following:

Renalliance Billing Group
Kings Harbor Health Services, LLC: 2004 - present
Quality Kidney Care: 2016 - present
Williamsburg Dialysis Center: 2020 - present

Bessy Suyin Flores Chang, MD, the proposed Medical Director, received a Doctor of Medicine from Universidad de El Salvador in 2011, and is Board Certified in Internal Medicine since 2017 and Board Certified in Nephrology since 2021, and has been a Nephrology Attending at St. Barnabas Hospital from July 2020 to present, Co-Director Nephrology Department- St. Barnabas Hospital, July 2020 to September 2024, Chief of Nephrology Department- St. Barnabas Hospital, September 2024-present, Affiliate Assistant Medical Professor, Department of Clinical Medicine -CUNY School of Medicine July 2020 to present. Dr. Flores Chang is registered through August 31, 2025.

Facility Name	Address	Star Rating
Williamsburg Center for Renal Dialysis	722 Myrtle Ave Brooklyn, NY 11205	2 Star
Cassena Kidney Care at Peninsula	50-15 Beach Channel Drive Far Rockaway, NY 11691	1 Star
Kings Harbor Dialysis Center	2020 East Gunhill Road Bronx, NY 10469	3 Star

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

Compliance with Applicable Codes, Rules and Regulations

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

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for Year One and Year Three after the ownership change, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
Revenue:				
Commercial - MC	\$449.98	\$1,705,860	\$450.04	\$2,274,480
Medicare - MC	\$325.00	\$6,160,050	\$325.00	\$8,213,400
Medicaid - MC	\$300.02	<u>\$758,160</u>	\$299.96	<u>\$1,010,880</u>
Deduction from Revenue		(\$172,481)		(\$229,975)
Total by Payor		\$8,451,589		\$11,268,785
Expenses:				
Operating Expense	\$212.76	\$5,376,832	\$192.85	\$6,498,202
Capital Expenses	\$59.17	<u>\$1,495,353</u>	\$16.03	<u>\$540,158</u>
Total Expenses	\$271.93	\$6,872,185	\$208.88	\$7,038,360
Net Income		\$1,579,404		\$4,230,425
Patients		162		216
Treatments		25,272		33,696

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

- Revenues are based partially on the St. Barnabas Hospital Hemodialysis Center's historical experience and the proposed owners' experience in running other New York State D&TCs. The proposed owners have been able to incorporate the most current reimbursement values into the overall projections
- Expenses are based on the proposed owners' experience in running several other New York State D&TCs.
- Utilization assumptions assume that the Dialysis Center will return to full capacity with this ownership change. Currently, the clinic is operating severely below capacity due to SBH's desire to divest itself from the operations, which began prior to COVID.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>(2026)</u>	<u>(2028)</u>
Commercial MC	15%	15%
Medicare MC	75%	75%
Medicaid MC	<u>10%</u>	<u>10%</u>
Total	100.00%	100.00%

Asset Purchase Agreement

The applicant submitted an executed APA to acquire certain assets related to the operations of the D&TC and to be effectuated upon PHHPC approval, summarized below:

Date:	June 20, 2024
Sellers:	St. Barnabas Hospital
Purchaser:	Bronx Renal Services, LLC
Acquired Assets:	All assets and properties of every kind, character and description (other than excluded assets) used in or for the benefit of the business, whether tangible, intangible, real, personal or mixed, including any assets of any of Seller's affiliates which are used in the dialysis business, which include all tangible property, equipment, drug inventories, tenant improvements, goodwill, software, intellectual property, assigned contracts, assigned personal property leases, books and records and all patient medical records being treated at the Center as of closing and within one year prior to closing date. Telephone and fax numbers and all licenses and permits.
Excluded Assets:	Seller's Medicaid and Medicare Numbers, cash accounts receivable, tax refunds, deposits, security deposits, prepaid expenses, any ownership interests in third parties, all recovery claims from Medicare and Medicaid or any third-party payor related to the operations of the dialysis business prior to the closing date. Cost report claims, insurance proceeds, contracts, and leases not assigned to the buyer, and inventory and supplies disposed of through the closing date in the ordinary course of business consistent with past practice.
Assumed Liabilities:	All obligations arising from events occurring on or after the closing date under those agreements and contracts, approved by buyer in its sole discretion.
Excluded Liabilities:	Buyer shall not assume or become liable for any of the debts, obligations or liabilities of seller arising prior to the closing date and of whatever type or nature
Purchase Price:	\$3,200,000
Payment of Purchase Price:	\$2,240,000 payable at closing and \$960,000 through a promissory note- with a One Year term and a 5% Interest rate to be paid over twelve-monthly payments of \$82,183.18 beginning the first day of the first month following closing.

Lease Rental Agreement

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

Premises:	4451 Third Avenue, Bronx, New York
Landlord:	Saint Barnabas Hospital
Tenant:	Bronx Renal Services, LLC
Term:	Ten Years, with (two) five-year Renewal options
Rent:	Year One Rent is \$509,075 per annum, payable in equal monthly installments of \$42,422.92. Rent increases three percent per Annum after year one
Provisions:	Triple Net NNN Lease

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

Capability and Feasibility

There is no project cost associated with this application. The purchase price of \$3,200,000 will be paid with \$2,240,000 in members' equity and a draft promissory note for \$960,000 between Bronx Renal, LLC and St. Barnabas Hospital with a 1-year term and a 5% interest rate. BFA Attachment A, Personal Net Worth Statements of Proposed Members', shows sufficient resources to fund the equity contribution.

Working capital requirements are estimated at \$1,173,060, which is equivalent to two months of third-year expenses. The applicant will provide equity from operations to meet the working capital requirement.

BFA Attachment B, Pro Forma Balance Sheet of Bronx Renal Services, LLC, indicates \$1,173,060 in members' equity as of the first day of operations.

The submitted budget indicates a net income of \$1,579,403 and \$4,230,425 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for Hemodialysis services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	Personal Net Worth Statements of Proposed Members'
BFA Attachment B	Pro Forma Balance Sheet of Bronx Renal Services, LLC
BFA Attachment C	Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Bronx Renal Services LLC as the owner and operator of a 40-station chronic renal dialysis diagnostic & treatment center currently owned by St. Barnabas Hospital at 4451 Third Avenue, Bronx, NY, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251114 E

FACILITY/APPLICANT:

Bronx Renal Services LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease acceptable to the Department of Health. [BFA]
2. Submission of an executed promissory note acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.

MEMORANDUM

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

From: Sarah Gold, Senior Attorney
Bureau of Program Counsel

Date: May 28, 2025

Subject: Approval of the Amendments to the Certificate of Incorporation for Finger Lakes Migrant Health Care Project, Inc.

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel.
- 2) A photocopy of a letter from attorney John Kelepurovski, Jr. requesting consent to the proposed Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc. dated December 4, 2024.
- 3) Proposed Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc.
- 4) A photocopy of the original Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc. dated January 21, 2000.
- 5) A photocopy of the Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc. adding Article 28 language to the Certificate of Incorporation dated January 30, 2004.
- 6) A photocopy of the approval of the Yates County Supreme Court approving the amendment dated August 12, 2004.
- 7) A photocopy of the approval of the amendment by the Public Health Council dated July 16, 2004.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: May 28, 2025

Subject: Approval of the Amendments to the Certificate of Incorporation for Finger Lakes Migrant Health Care Project, Inc.

Finger Lakes Migrant Health Care Project, Inc. requests approval to amend their Certificate of Incorporation permitting them to operate their health care facilities as "Finger Lakes Health Care Project, Inc." pursuant to Article 28 of the Public Health Law. Approval of the Public Health and Hospital Council ("PHHPC") is now requested and required.

Finger Lakes Migrant Health Care Project, Inc. is a non-profit corporation formed on January 24, 2000 which operates Diagnostic and Treatment Center Clinics in the Finger Lakes region (Cert # 5861200R), to support the region's agricultural workers by ensuring them access to medical and health related and supportive care. In 2004, the Public Health Council approved amendments to Finger Lakes Migrant Health Care Project, Inc.'s Certificate of Incorporation in connection with its establishment under Article 28 of the Public Health Law.

Finger Lakes Migrant Health Care Project, Inc. seeks to change its name to reflect its broader reach to the community beyond the migrant community.

Pursuant to NYS Not-For-Profit Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1), PHHPC must consent to the requested changes prior to the filing of the Certificate of Amendment of the Certificate of Incorporation.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation or the proposed new name, and both are legally acceptable.

Attachments.

BARCLAY DAMON ^{LLP}

John Kelepurovski, Jr.
Partner

December 4, 2024

VIA ELECTRONIC MAIL

phhpc@health.ny.gov

New York State Department of Health, Public Health
and Health Planning Council Unit
Corning Tower, Room 1805
Albany, New York 12237
Attn: The Division of Legal Affairs

Re: Finger Lakes Migrant Health Care Project, Inc. DOS ID 2465220
Consent to Amend Certificate of Incorporation to Effectuate a Name Change.

To whom it may concern:

Pursuant to the NYS Department of State's letter dated December 3, 2024 regarding the above entity (a copy of which is enclosed), I am writing to request the consent of the Public Health and Health Planning Council to amend the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc. to change its name to Finger Lakes Health Care Project, Inc.

Finger Lakes Migrant Health Care Project, Inc. is a domestic not-for-profit corporation that was formed on January 24, 2000. Its principal address is located at 14 Maiden Lane, P.O. Box 423, Penn Yan, NY 14527. The corporation's main focus is to support its' region's agricultural workers by ensuring them access to medical and health related and supportive care.

Attached is a copy of the proposed Certificate of Amendment for which consent is being sought.

If you have any questions or need additional information, please do not hesitate to contact me. Otherwise, if you could please forward to my attention the requested consent as soon as possible, that would be very much appreciated. Thank you.

Respectfully submitted



John Kelepurovski, Jr.

JK:amc
Enclosures

Barclay Damon Tower - 125 East Jefferson Street - Syracuse, New York 13202 barclaydamon.com
JKelepurovski@barclaydamon.com Direct: (315) 425-2739 Fax: (315) 425-8582

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC.**

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

FIRST. The name of the Corporation is **FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC.**

SECOND. The Certificate of Incorporation of the Corporation was filed on January 24, 2000.

THIRD. The Corporation was formed under the New York State Not-for-Profit Corporation Law.

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

FIFTH. The amendment of the Certificate of Incorporation of the Corporation effected by this Certificate of Amendment is to amend the name of the Corporation.

SIXTH. To effectuate the foregoing, the Certificate of Incorporation is amended as follows:

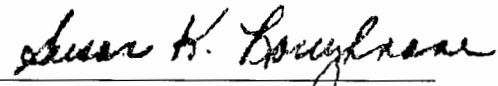
a. Article First of the Certificate of Incorporation is hereby amended in its entirety, to read as follows:

“FIRST: The name of the Corporation is Finger Lakes Community Health, Inc. (the “Corporation”).”

SEVENTH. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

14 Maiden Lane, PO Box 423
Penn Yan, New York 14527

EIGHTH. The foregoing amendment to the Certificate of Incorporation of the Corporation was authorized at a meeting of the Board of Directors of the Corporation at which a quorum was present, by the vote of at least a majority of the directors entitled to vote thereon, there being no members entitled to vote.

By: 
Name: Susan Loughnane
Title: Board Chair

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC.**

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

John Kelepurovski, Jr., Esq.
Barclay Damon, LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Ref. 3068828

CERTIFICATE OF INCORPORATION

OF

FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC.

F000124001343

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

We, the undersigned, for the purpose of forming a corporation with no members under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certify:

FIRST: The name of the corporation is **FINGER LAKES MIGRANT HEALTH CARE PROJECT, Inc.** (the "Corporation").

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

THIRD: The Corporation shall be a type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The Corporation is formed for the following exclusive purposes:

Identify migrant and seasonal farm workers and their families ("Migrants") in need of medical attention; ensure access to medical and health related and supportive care, services and information to Migrants in the Finger Lakes Region of New York State and by so doing promote health and provide relief to the poor.

Advocate on behalf of individual Migrants for their medical treatment by the medical provider health system.

Promote community awareness of and sensitivity to migrant and seasonal farm worker culture and lifestyle.

FIFTH: The Corporation shall have all the powers enumerated in Section 202 of the Not-for-Profit Corporation Law, and other powers that are hereafter premitted by the law, including the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and personal property in furtherance of such purposes listed in paragraph FOURTH provided, that the Corporation may not use such powers unless and except to do so serves or furthers the purpose of the Corporation as stated above in paragraph FOURTH.

SIXTH: The office of the Corporation is to be located in the County of Yates and State of New York.

SEVENTH: The duration of the Corporation is to be perpetual.

EIGHTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: P.O. Box 546, Penn Yan, New York 14527.

NINTH:

(A) The Corporation is organized exclusively for the purposes as specified in section 501(c)3 of the Internal Revenue Code of 1986, as amended and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)3 of the Internal Revenue Code of 1986, as amended.

(B) Nothing contained in this Certificate shall authorize the Corporation directly or indirectly, to engage in or include among its purposes, any of the activities described in subsections 404(b)-(u) of the Not for Profit Corporation Law.

(C) No part of the income of the Corporation shall inure to the benefit of any

2

director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(D) No part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

(E) In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of Justice of the Supreme Court of the State of New York.

TENTH: The names and addresses of the directors until the first organizational meeting are:

Peter Deckman, St Michael's Rectory, 210 Keuka St. Penn Yan, New York 14527

Lew Papenfuse, 80 St. Paul Street, Rochester, New York 14604

Brenda Lucey, 5535 Wells Curtiss Road, Canandaigua, New York 14424

ELEVENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or any other statute of the State of New York will be endorsed upon or annexed to this Certificate.

TWELFTH: Nothing contained in the Certificate of Incorporation shall authorize the corporation to:

(1) establish or operate a hospital or to provide hospital service or health related service, a home health agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital;

(2) engage in the practice of the profession of medicine or any other profession required to be licensed by Title 8 of the Education Law;

(3) establish or operate a school; or

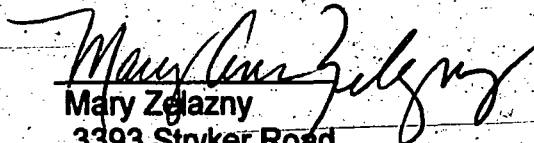
(4) engage in the practice of law.

THIRTEENTH: The incorporators are natural persons of the age of eighteen years or older.

IN WITNESS WHEREOF, this certificate has been signed by the incorporators this ___ day of January, 2000.



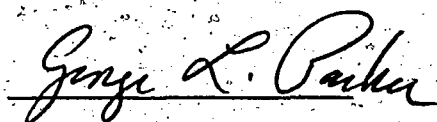
Patricia Rios
3799 Bath Road,
Penn Yan, New York 14527



Mary Zelazny
3393 Stryker Road
Penn Yan, NY 14527

STATE OF NEW YORK }
COUNTY OF MONROE } ss.:

On this 21st day of January, 2000, before me personally came Patricia Rios and Mary Zelazny each to me personally known to be the person described in; and who executed, the foregoing Certificate of Incorporation and she duly acknowledged to me that she executed the same.



GEORGE L. PARKER
Notary Public, State of New York
Monroe County
My Commission Expires
12/31/00

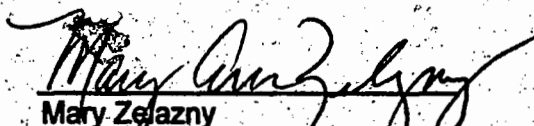
AFFIDAVIT OF AUTHORIZATION OF INCORPORATION

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

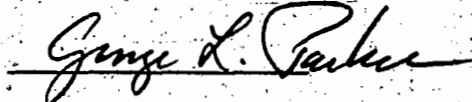
Patricia Rios, and Mary Zelazny, each for herself, being duly sworn, does depose and say:

I am one of the subscribers of the Certificate of Incorporation of FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC.; that this certificate of incorporation is the incorporation of an existing unincorporated organization, namely FINGER LAKES MIGRANT HEALTH CARE PROJECT, the subscribers of this certificate of incorporation are a majority of the members of a committee duly authorized to incorporate FINGER LAKES MIGRANT HEALTH CARE PROJECT.


Patricia Rios


Mary Zelazny

Severally sworn and subscribed to before me this 21 day of January, 2000.



GEORGE L. PARKER
Notary Public, State of New York
Monroe County
My Commission Expires
12/31/00

117.CI

F 000124001343

CERTIFICATE OF INCORPORATION
OF FINGER LAKES MIGRANT HEALTH

CARE PROJECT, INC.

Formed Pursuant to §402

NYS Not-for-Profit Corporation

Law

Filed By:

George L. Parker
Attorney at Law
267 Mulberry St.
Rochester, NY 14620
(716) 244-1040

*mark per
type B*

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 24 2000 1/24/00

TAXS BY: MAR

yes

9

00, 112 11 11 12 11

FILED

000124001393

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC.

16040819000430

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

We, the undersigned, being the President and Secretary, do hereby certify:

1. The name of the corporation is Finger Lakes Migrant Health Care Project, Inc.
2. The certificate of incorporation of Finger Lakes Migrant Health Care Project, Inc. was filed by the Department of State on January 24, 2000. The corporation was formed under the Not-for-Profit Corporation Law of the State of New York.
3. Finger Lakes Migrant Health Care Project, Inc. is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under section 201 of said law.
4. The certificate of incorporation is hereby amended to add the following additional purposes to Article Fourth:

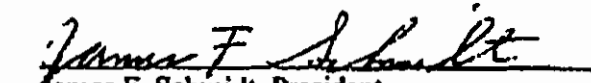
Establish, maintain, and operate a diagnostic and treatment facility as defined in Article 28 of the Public Health Law and to solicit funds for such purposes, provided, however, that the corporation shall not establish or operate such diagnostic and treatment facility or solicit funds therefore without the prior written approval of the New York State Department of Health.
5. The certificate of incorporation is also amended to revise Article Ninth, section (B) to read as follows:

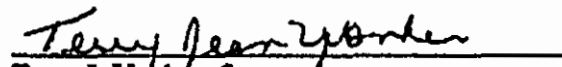
Nothing contained in this Certificate shall authorize the Corporation directly or indirectly, to engage in or include among its purposes, any of the activities described in subsections 404(b)-(u) of the Not-for-Profit Corporation Law, except that the Corporation shall be authorized to establish, maintain and operate a diagnostic and treatment facility as defined in Article 28 of the Public Health Law and to raise funds for that purpose.
6. The certificate of incorporation is also amended to revise the first line of Article Twelve to read as follows:

Except as necessary to carry out the purposes authorized herein, nothing in the Certificate of Incorporation shall authorize the corporation to:
7. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: P.O. Box 546, Penn Yan, New York 14527.

8. This amendment to the certificate of incorporation of was authorized by the consent of a majority of the members of the entire Board of Directors of the corporation voting in person at a meeting duly called therefore.

IN WITNESS WHEREOF, the undersigned have subscribed this certificate and affirm the statements herein as true under the penalties of perjury this 20 day of January, 2004


James F. Schmidt, President
80 St. Paul Street,
Rochester, NY 14604


Terry J. Yonker, Secretary
2933 Sandhill Road
Newark, NY 14513

\\N\17001\Conf\of\Amendments\upd

SUPREME COURT
COUNTY OF ~~TOMPKINS~~ ^{YATES} : STATE OF NEW YORK

In the Matter of an Application
for the Approval of the Certificate of
Amendment of the Certificate of Incorporation of

FINGER LAKES MIGRANT HEALTH CARE
PROJECT, INC.

Pursuant to the Not-For-Profit
Corporation Law.

APPROVAL OF JUSTICE
OF SUPREME COURT,
~~NINTH~~ JUDICIAL DISTRICT
^{SEVENTH}

The undersigned, a Justice of the Supreme Court of the State of New York, Seventh Judicial District, does hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of FINGER LAKES MIGRANT HEALTH CARE PROJECT, INC. and consents that the same be filed.

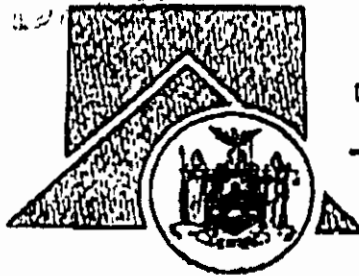
Dated: August 12, 2004

acting Walter J. Tabak
JUSTICE, SUPREME COURT
~~NINTH~~ JUDICIAL DISTRICT
^{SEVENTH}

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

William E. Miller
ASSISTANT ATTORNEY GENERAL

8.2.04
DATE



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

PUBLIC HEALTH COUNCIL

July 16, 2004

Ms. Patricia Rios
Executive Director
Finger Lakes Migrant Health Care Project
165 Main Street
P.O. Box 423
Penn Yan, New York 14527

Re: Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc.

Dear Ms. Rios:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 14th day of May, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc., dated January 30, 2004.

Sincerely,

Karen S. Westervelt
Executive Secretary

/md

4

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 18th day of June 2025, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Migrant Health Care Project, Inc., as attached.

MEMORANDUM

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

From: Sarah Gold, Senior Attorney
Bureau of Program Counsel

Date: May 28, 2025

Subject: Proposed Assumed Name for the Community Health Center of Buffalo Inc. (dba "Community Health Center of Western New York, Inc.")

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A resolution of the Board of Directors authorizing the submission of the Certificate of Assumed name for The Community Health Center of Buffalo Inc. dated June 24, 2024.
- 3) A photocopy of the Board of Director meeting minutes reflecting the vote of the resolution dated June 24, 2024.
- 4) A proposed Certificate of Assumed Name.
- 5) A photocopy of the Restated Certificate of Incorporation of CHC Buffalo Development Corp. containing a name change to Community Health Center of Buffalo Inc. dated December 15, 1999.
- 6) A photocopy of the letter from the Public Health Council consenting to the filing of the Restated Certificate of Incorporation of CHC Buffalo Development Corp. dated February 9, 2000.
- 7) A photocopy of the letter from the Office of the Attorney General consenting to the filing of the Restated Certificate of Incorporation of CHC Buffalo Development Corp. dated February 15, 2000.
- 8) A photocopy of the approval from Erie County Supreme Court consenting to the filing of the Restated Certificate of Incorporation of CHC Buffalo Development Corp. dated February 16, 2000.
- 9) A photocopy of the Bylaws of the Community Health Center of Buffalo, Inc.
- 10) A photocopy of the Operating Certificate for the Community Health Center of Buffalo Inc.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: May 28, 2025

Subject: Approval of Proposed Assumed Name for the Community Health Center of Buffalo Inc. (dba "Community Health Center of Western New York, Inc.")

Community Health Center of Buffalo Inc. ("CHCB") requests Public Health and Health Planning Council ("PHHPC") approval to file a Certificate of Assumed Name permitting them to operate their health care facilities as "Community Health Center of Western New York, Inc" pursuant to Article 28 of the Public Health Law.

CHCB is a not-for-profit corporation formed on April 26, 1999 under the name CHC of Buffalo Development Corp. which operates Diagnostic and Treatment Center Extension Clinics in Buffalo, Cheektowaga, Lockport, Niagara Falls and North Tonawanda (Cert # 1401230R). In 2000, the Public Health Council ("PHC") approved amendments to CHCB's Certificate of Incorporation which included approval of the entity's current name.

CHCB has undertaken a rebranding campaign to increase awareness about its services and would like to use a uniform name which will cover its current locations and allow for expansion. Authorization to submit the proposed Certificate of Assumed Name was demonstrated by a Resolution of the Board of Directors dated June 24, 2024.

Pursuant to NYS Not-For-Profit Law § 804(a)(i) and 10 NYCRR § 600.11(a)(2), PHHPC must consent to the requested changes prior to the filing of the Certificate of Assumed Name.

There is no legal objection to the proposed Certificate of Assumed Name, and it is in legally acceptable form.

Attachments

**RESOLUTION
OF THE
BOARD OF DIRECTORS**

**Authorization to Submit Certificate of Assumed Name with New York State
Division of Corporations, State Records and Uniform Commercial Code**

Recommendation: The Community Health Center of Buffalo Inc. (CHCB) has been providing services in Buffalo, Niagara Falls, Lockport, Cheektowaga, BFNC using site specific names. Focus groups were held when planning new sites in Niagara Falls and Lockport when residents indicated that they did not like "Buffalo" in the name. Thus, DBAs were filed for the Community Health Center of Niagara (CHCN), Community Health Center of Lockport (CHCL), etc.

CHCB wants to undertake a branding campaign to increase awareness about our services in Erie and Niagara Counties and need a uniform name. Given the possibilities with telehealth, we need a name that covers current locations and allows for expansion.

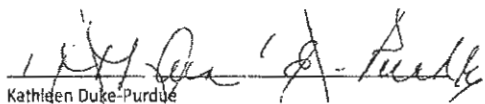
Therefore, the executive leadership is recommending filing a Certificate of Assumed Name to use the assumed name "Community Health Center of Western New York, Inc." (CHCWNYS) for use across the Community Health Center of Buffalo Inc. service area.

NOW THEREFORE BE IT

RESOLVED, that the Community Health Center of Buffalo Inc. (CHCB) Board of Directors approves filing a Certificate of Assumed Name to be the Community Health Center of Western New York, Inc. (CHCWNYS) for use across the Community Health Center of Buffalo Inc. service area.

Accepted this 24th day of June 2024

BY:


Kathleen Duke-Purdue

COMMUNITY HEALTH CENTER OF BUFFALO, INC.

Secretary, Board of Directors



**Division of Corporations,
State Records and
Uniform Commercial Code**

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

Certificate of Assumed Name

(Pursuant to General Business Law §130)

1. REAL NAME OF ENTITY:

Community Health Center of Buffalo, Inc.

1a. FICTITIOUS NAME, IF ANY, OF FOREIGN ENTITY (Not Assumed Name):

2. THE ENTITY WAS FORMED OR AUTHORIZED UNDER THE FOLLOWING NEW YORK LAW (Check one):

- ☐ Business Corporation Law ☐ Limited Liability Company Law ☐ Religious Corporations Law
☐ Education Law ☒ Not-for-Profit Corporation Law ☐ Revised Limited Partnership Act
☐ Other (specify law): _____

3. ASSUMED NAME OF ENTITY:

Community Health Center of Western New York

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST INCLUDE NUMBER AND STREET). IF NONE, CHECK THIS BOX ☐ AND PROVIDE OUT-OF- STATE ADDRESS:

34 Benwood Ave Buffalo, NY 14214

5. COUNTY(IES) IN WHICH ENTITY DOES OR INTENDS TO DO BUSINESS:

☐ ALL COUNTIES (or check applicable county(ies) below)

- | | | | | | | | |
|--|---|-------------------------------------|--|---|------------------------------------|--------------------------------------|---|
| <input type="checkbox"/> Albany | <input checked="" type="checkbox"/> Cattaraugus | <input type="checkbox"/> Chenango | <input type="checkbox"/> Delaware | <input type="checkbox"/> Franklin | <input type="checkbox"/> Hamilton | <input type="checkbox"/> Lewis | <input type="checkbox"/> Montgomery |
| <input checked="" type="checkbox"/> Allegany | <input type="checkbox"/> Cayuga | <input type="checkbox"/> Clinton | <input type="checkbox"/> Dutchess | <input type="checkbox"/> Fulton | <input type="checkbox"/> Herkimer | <input type="checkbox"/> Livingston | <input type="checkbox"/> Nassau |
| <input type="checkbox"/> Bronx | <input checked="" type="checkbox"/> Chautauqua | <input type="checkbox"/> Columbia | <input checked="" type="checkbox"/> Erie | <input checked="" type="checkbox"/> Genesee | <input type="checkbox"/> Jefferson | <input type="checkbox"/> Madison | <input type="checkbox"/> New York |
| <input type="checkbox"/> Broome | <input type="checkbox"/> Chemung | <input type="checkbox"/> Cortland | <input type="checkbox"/> Essex | <input type="checkbox"/> Greene | <input type="checkbox"/> Kings | <input type="checkbox"/> Monroe | <input checked="" type="checkbox"/> Niagara |
| <input type="checkbox"/> Oneida | <input checked="" type="checkbox"/> Orleans | <input type="checkbox"/> Queens | <input type="checkbox"/> St. Lawrence | <input type="checkbox"/> Schuyler | <input type="checkbox"/> Sullivan | <input type="checkbox"/> Warren | <input checked="" type="checkbox"/> Wyoming |
| <input type="checkbox"/> Onondaga | <input type="checkbox"/> Oswego | <input type="checkbox"/> Rensselaer | <input type="checkbox"/> Saratoga | <input type="checkbox"/> Seneca | <input type="checkbox"/> Tioga | <input type="checkbox"/> Washington | <input type="checkbox"/> Yates |
| <input type="checkbox"/> Ontario | <input type="checkbox"/> Otsego | <input type="checkbox"/> Richmond | <input type="checkbox"/> Schenectady | <input type="checkbox"/> Steuben | <input type="checkbox"/> Tompkins | <input type="checkbox"/> Wayne | |
| <input type="checkbox"/> Orange | <input type="checkbox"/> Putnam | <input type="checkbox"/> Rockland | <input type="checkbox"/> Schoharie | <input type="checkbox"/> Suffolk | <input type="checkbox"/> Ulster | <input type="checkbox"/> Westchester | |

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON, CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE. (Use page 2 if needed. The address(es) must be a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph 5.) If none, check this box ☐: No New York State Business Location.

Community Health Center of Niagara Falls 2715 Highland Ave. Niagara Falls, NY 14305

Community Health Center of 100 Main Street Lockport, NY 14094

Print or Type Name of Signer: Dr. LaVonne Ansari

Signature:

Capacity of Signer (Check one): ☒ Authorized Person ☐ Officer of the Corporation ☐ General Partner of the Limited Partnership
☐ Member of the Limited Liability Company ☐ Manager of the Limited Liability Company

Certificate of Assumed Name

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON OR CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE: (Continued)

Community Health Center of Cheektowaga, 934 Cleveland Drive NY 14225

Community Health Center of 227 Ridge Road Lackawanna, NY 14218

Community Health Center of Buffalo BFNC 421 Monroe St., Buffalo, NY 14212

Filer's Name and Mailing Address:

Dr. LaVonne Ansari

Name:

Community Health Center of Buffalo, Inc.

Company, if Applicable:

34 Benwood Avenue

Mailing Address:

Buffalo, NY 14214

City, State and Zip Code:

NOTE: You are not required to use this form. This certificate should be prepared under the guidance of an attorney.

FEE: Limited Liability Companies and Limited Partnerships - \$25.

Corporations - \$25 plus the fee for each county indicated in paragraph 5. The additional fee for each county within New York City (Bronx, Kings, New York, Queens and Richmond) is \$100 additional. The fee for each county outside New York City is \$25. Checks over \$500 must be certified.

(For office use only)

Community Health Center of Buffalo, Inc.
BOD MEETING MINUTES
June 24, 2024 @ 6:00 pm

Attendance Mark King, Chair; Steve Bojdak, Treasurer; Rev. Raymond Allen; Denise Dennis-Coke, MD; John Torrey, Ph.D.; Michael Ikpeze

Staff: LaVonne Ansari, Kenyani Davis, Arvela Heider, Jonathan Mohr, Josephine Wilton, Shilpa Kapoor, Alfred Hammonds

Excused: Kathleen Duke-Purdue

Guests:

Quorum: Yes

Topic	Discussion	Action/Responsible Party
Call to Order	The meeting was called to order by M. King at 6:02 pm.	Noted.
Minutes	The May 20, 2024 minutes were reviewed and approved as written.	J. Torrey motioned to accept the May minutes. Rev. Allen seconded. Motion carried.
Medical A. May CMO Report	K. Davis presented the May CMO Report. Highlights included: <ul style="list-style-type: none">• Ongoing EMR optimization is going well. In-house medications section has been added to EMR and implementation will begin in July.• Clinical mapping in Azara shows a 7/8% increase in breast cancer screenings (ages 50-74); hypertension control is just shy of the 70% target (69.8%).• CMO is planning to move the current Director of Behavioral Health to a BH Strategist.• (1) Pediatric Physician resigned. Her last day is set for June 28, 2024.	J. Torrey motioned to accept the May CMO Report. D. Dennis-Coke seconded. Motion carried.

<p>B. Dental Report</p>	<ul style="list-style-type: none"> • (2) Physician Interviews completed; both declined the position. <p><u>FTCA Report Out:</u></p> <ul style="list-style-type: none"> • No report outs <p>S. Kapoor presented the May Dental Report. Highlights included:</p> <ul style="list-style-type: none"> • Hiring for Lockport is complete. The only vacancy is for Dental front desk. • Dr. Briana Kim has joined CHCB full-time. She will be covering two days in NF and two days in Buffalo. She is enrolled in Medicare as of May 1, 2024. • Apprenticeship participants Chloe Barrett and Beyanca McDaniels graduated in May 2024. Chloe got into Dental Hygiene School and Beyanca got into an Advanced Infection Control Certificate Program. • Dental UDS measure for sealants were discovered to be mapped incorrectly. Dental has worked with eCW to make sure it is now being mapped correctly and flows through Azara. • We are planning a Father/Son Dental Day at the Resiliency Center for July 1st. <p>M. King inquired about future plans for the apprenticeship program. S. Kapoor stated that the program is completed. CHCB intends to continue the program. S. Kapoor will meet with BEOC leadership to discuss future parameters of the program.</p>	<p>M. Ikpeze motioned to accept the May Dental Report. Rev. Allen seconded. Motion carried.</p>
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C. May CEO Report	<p>L. Ansari presented the May CEO Report. Highlights included:</p> <ul style="list-style-type: none"> • The Emmett Till program was a success. • L. Ansari participated in several 5/14 activities including the premiere of Pain and Peace, a documentary produced by Rais Bhuiyan at World Without Hate. The documentary also featured Garnell Whitfield. 	J. Torrey motioned to approve the May CEO Report. Rev. Allen seconded. Motion carried.
Strategic Plan A. Change in Scope: Add Service—Substance Use Column I and III B. Change in Scope: Add Location—Resiliency Center C. Reentry Grant Submission	<p>A. Heider requested board approval for adding Substance Use services (Behavioral Health) to Columns I and III on Form 5A.</p> <p>A. Heider requested board approval for adding the Resiliency Center (1001 E. Delavan Avenue) to CHCB's scope.</p> <p>A. Heider requested board approval for submission of an application for a grant for completing pre-release assessments for justice involved individuals. The grant would be for \$500k per year for two years.</p>	<p>S. Bojdak motioned to accept the Change in Scope: Add Service—Substance Use Column I and III. J. Torrey seconded. Motion carried.</p> <p>S. Bojdak motioned to accept the Change in Scope: Add Location—Resiliency Center. Rev. Allen seconded. Motion carried.</p> <p>J. Torrey motioned to accept the Reentry Grant submission. D. Dennis-Coke seconded. Motion carried.</p>
Adjournment	The meeting was adjourned at 7:27 pm. The next meeting is scheduled for July 22 nd @ 6 pm.	

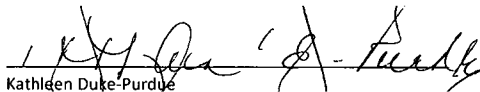

Kathleen Duke-Purdue

EXHIBIT A

CERTIFICATE OF INCORPORATION

1000217000671

RESTATED CERTIFICATE OF INCORPORATION
OF

CHC OF BUFFALO DEVELOPMENT CORP.

Under Section 805 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the Vice President of CHC OF BUFFALO DEVELOPMENT CORP. (the "Corporation"), hereby certifies as follows:

FIRST: The name of the Corporation is CHC OF BUFFALO DEVELOPMENT CORP. ("the "Corporation").

SECOND: The Certificate of Incorporation of the Corporation was filed with the New York Department of State on April 26, 1999. The law under which the Corporation was formed is the Not-For-Profit Corporation Law.

THIRD: The Certificate of Incorporation of the Corporation is hereby amended to change the name of the Corporation by deleting the entire Article 1, which prior to this amendment read:

1. The name of the corporation is CHC OF BUFFALO DEVELOPMENT CORP.

and replacing it with a new Article 1, such that Article 1 shall now read:

1. The name of the Corporation is COMMUNITY HEALTH CENTER OF BUFFALO, INC.

FOURTH: The Certificate of Incorporation of the Corporation is hereby further amended to change the corporate type from a Type A corporation to a Type B corporation by:

(i) deleting the entire Article 2, which prior to this amendment read:

2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102; the corporation is a Type A corporation.

and replacing it with a new Article 2, such that Article 2 shall now read:

/

2. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law, and it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or shall inure to the benefit of, its members, directors or officers except to the extent permitted under the New York Not-for-Profit Corporation Law.

and (ii) by enumerating the following as Article 4 and Article 5 of the Certificate of Incorporation of the Corporation with the succeeding Articles sequentially renumbered as required such that Articles 4 and 5 shall now read:

4. The Corporation shall have the powers enumerated in section 202(a) of the Not-for-Profit Corporation Law of the State of New York.

5. The Corporation shall be a Type B corporation under section 201 of the New York Not-for-Profit Corporation Law.

FIFTH: The Certificate of Incorporation of the Corporation is hereby further amended to change the purposes and powers of the Corporation set forth in Article 3 of the Certificate of Incorporation of the Corporation by deleting the entire Article 3, which prior to this amendment read:

3. The purpose or purposes for which this corporation is organized are as follows, to wit:

To exercise, promote and protect the privileges and interests of the residents of the community; to enhance the public health and welfare of the residents of the community.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers.

In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in Section 202 of the Not-For-Profit Corporation Law, together with the powers to solicit grants and contributions for corporate purposes.

Nothing contained in this certificate shall authorize or empower the corporation to perform or engage in any act or practice prohibited by General Business Law, Section 340 or any other antimonopoly statute of the State of New York.

and replacing it with a new Article 3, such that Article 3 shall now read:

3. The purposes for which the Corporation is formed are:

A. To supplement health care services presently offered in the City of Buffalo, New York by establishing a Community Health Center as defined under applicable federal law that will provide prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition on an outpatient basis in a geographic area where patients are medically underserved by existing institutions.

B. To establish, maintain and operate a diagnostic and treatment center pursuant to Article 28 of the Public Health Law of the State of New York for the prevention, diagnosis and treatment of human disease, pain, injury, deformity, or physical condition on an outpatient basis.

C. In furtherance of corporate purposes, to coordinate the aforesaid activities with the activities of other federal, State and local health services delivery projects and programs serving the Buffalo, New York area, and to establish collaborative relationships with such projects and programs.

D. To take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its purposes, any property, real or personal, without limitation as to the amount or value, and to sell, mortgage, convey and dispose of any such property and to invest and reinvest the principal thereof.

E. To acquire, and obtain voluntary grants, gifts and other contributions from individuals, institutions, organizations and agencies to perpetuate and encourage the purposes for which the Corporation has been formed.

F. To do any other act or thing incidental to or connected with the foregoing purposes and objectives or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; provided, however, that nothing herein shall authorize the Corporation, directly or indirectly, to own or operate a hospital, hospital service, or a health-related service other than as authorized by Article 3 hereof, a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 33, 36, 40, and 44, respectively, of the Public Health Law, or to solicit, collect, or otherwise raise or obtain any funds, contributions, or grants from any source for the establishment or operation of any facility other than the Corporation.

SIXTH: The Certificate of Incorporation of the Corporation is hereby further amended to effectuate the modification of the purposes and powers of the Corporation by deleting the entire first Article 4, which prior to this amendment read:

4. Notwithstanding any other provisions of these articles, the corporation is organized exclusively for one or more of the purposes as specified in Section 501 (c) (3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Internal Revenue Code Section 501 (c) (3) or corresponding provisions of any subsequent Federal tax laws.

No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, trustee, director, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by the Internal Revenue Code Section 501[h] or participating in or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidates for public office.

In the event of dissolution, all of the remaining assets and property of the corporation shall after payment of necessary expenses thereof be distributed to another organization exempt under Internal Revenue Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal Tax Laws, or to the Federal government, or state or local government for a public purpose, subject to the approval of a Justice of the Supreme Court of the State of New York.

In any taxable year in which the corporation is a private foundation as described in Internal Revenue Code Section 509 (a), the corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Internal Revenue Code Section 4942, and the corporation shall not (a) engage in any act of self-dealing as defined in Internal Revenue Code Section 4941(d), retain any excess business holdings as defined in Internal Revenue Code Section 4943 (c), (b) make any investments in such manner as to subject the corporation to tax under Internal Revenue Code Section 4944, or (c) make any taxable expenditures as defined in Internal Revenue Code Section 4945 (d) or corresponding provisions of any subsequent Federal tax laws.

And restating the provisions of Article 4 in Articles 8, 9, 10, 11, and 12 of the Certificate of Incorporation of the Corporation with the succeeding Articles sequentially renumbered, as required, such that Articles 8, 9, 10, 11 and 12 shall now read:

8. The Corporation shall neither have, nor exercise, any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation that is exempt from Federal income taxation as an organization described in section 501(c)(3) of the United States Internal Revenue Code (the "Code"); or (ii) as a corporation contributions to which are deductible under section 170(c)(2) of the Code.

9. No part of the net earnings or the assets of the Corporation shall inure to the benefit of or be distributed to its members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of enumerated corporate purposes.

10. No part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

11. Upon the dissolution of the Corporation, it shall, after paying, or making provisions for the payment of, all of the debts, expenses and liabilities of the corporation, distribute all of its assets to such organization or organizations that are: (i) organized and operated exclusively for charitable, educational or scientific purposes to support the delivery of health care in Buffalo, New York to medically underserved populations, and which shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Code; and (ii) affiliated with Erie County Medical Center in the City of Buffalo, County of Erie, State of New York, subject to the approval of a Justice of the Supreme Court of the State of New York. If eligible distributee corporations do not exist, or are deemed ineligible by a final order of a court of competent jurisdiction, all available assets on dissolution shall be distributed by order of a Justice of the Supreme Court of the State of New York, Erie County to such organization or organizations, as said Court shall determine, which are organized and operated in such manner as, in the judgment of the Court, will best accomplish the enumerated purposes for which the Corporation was formed.

5

12. All references herein to provisions of the Internal Revenue Code or the Code shall be deemed to include the corresponding provisions of future United States Internal Revenue Laws.

SEVENTH: The Certificate of Incorporation is hereby further amended to consolidate the second Article 4 addressing the location of the office of the Corporation and Article 6 addressing the designated agent for service and the succeeding Articles are sequentially renumbered such that the entire second Article 4 is deleted which prior to this amendment read:

4. The office of the corporation is to be located in the County of Erie.

and the entire Article 6 is deleted which prior to this amendment read:

6. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

c/o Damon & Morey LLP
1000 Cathedral Place
298 Main Street
Buffalo, NY 14202

and replacing Article 4 and Article 6 of the Certificate of Incorporation of the Corporation with a new Article 7, such that Article 7 shall now read:

7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address within this state to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Community Health Center of Buffalo, Inc.
Attn.: Vincent J. Thompson, M.D.
Chief Executive Officer and Medical Director
462 Grider Street
Buffalo, New York 14215

EIGHTH: The Certificate of Incorporation of the Corporation is hereby further amended to delete reference to the initial Board of Directors set forth in Article 5 of the Certificate of Incorporation of the Corporation, and the succeeding Articles are sequentially renumbered as required.

NINTH: The Certificate of Incorporation of the Corporation is hereby further amended to add the rights and powers of the Board of Directors of the Corporation and the succeeding Articles are sequentially renumbered such that Article 13 shall now read:

13. This Certificate may be amended only by the affirmative vote of at least two-thirds (2/3) the entire Board of Directors of the Corporation.

TENTH: The text of the Certificate of Incorporation of the Corporation, as amended, is hereby restated as amended, to read as herein set forth in full:

CERTIFICATE OF INCORPORATION
OF
COMMUNITY HEALTH CENTER OF BUFFALO, INC.

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

The undersigned, for the purpose of forming a corporation under section 402 of the New York Not-for-Profit Corporation Law, does hereby certify:

1. The name of the Corporation is COMMUNITY HEALTH CENTER OF BUFFALO, INC.

2. The Corporation is a corporation as defined in subparagraph (a) (5) of section 102 of the Not-for-Profit Corporation Law, and it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or shall inure to the benefit of, its members, directors or officers except to the extent permitted under the New York Not-for-Profit Corporation Law.

3. The purposes for which the Corporation is formed are:

A. To supplement health care services presently offered in the City of Buffalo, New York by establishing a Community Health Center as defined under applicable

federal law that will provide prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition on an outpatient basis in a geographic area where patients are medically underserved by existing institutions.

B. To establish, maintain and operate a diagnostic and treatment center pursuant to Article 28 of the Public Health Law of the State of New York for the prevention, diagnosis and treatment of human disease, pain, injury, deformity, or physical condition on an outpatient basis.

C. In furtherance of corporate purposes, to coordinate the aforesaid activities with the activities of other federal, State and local health services delivery projects and programs serving the Buffalo, New York area, and to establish collaborative relationships with such projects and programs.

D. To take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its purposes, any property, real or personal, without limitation as to the amount or value, and to sell, mortgage, convey and dispose of any such property and to invest and reinvest the principal thereof.

E. To acquire, and obtain voluntary grants, gifts and other contributions from individuals, institutions, organizations and agencies to perpetuate and encourage the purposes for which the Corporation has been formed.

F. To do any other act or thing incidental to or connected with the foregoing purposes and objectives or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; provided, however, that nothing herein shall authorize the Corporation, directly or indirectly, to own or operate a hospital, hospital service, or a health-related service other than as authorized by Article 3 hereof, a drug maintenance program,

a certified home health agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 33, 36, 40, and 44, respectively, of the Public Health Law, or to solicit, collect, or otherwise raise or obtain any funds, contributions, or grants from any source for the establishment or operation of any facility other than the Corporation.

4. The Corporation shall have the powers enumerated in section 202(a) of the Not-for-Profit Corporation Law of the State of New York.

5. The Corporation shall be a Type B corporation under section 201 of the New York Not-for-Profit Corporation Law.

6. The Office of the Corporation is located in the County of Erie.

7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address within this state to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Community Health Center of Buffalo, Inc.
Attn.: Vincent J. Thompson, M.D.
Chief Executive Officer and Medical Director
462 Grider Street
Buffalo, New York 14215

8. The Corporation shall neither have, nor exercise, any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation that is exempt from Federal Income taxation as an organization described in section 501(c)(3) of the United States Internal Revenue Code (the "Code"); or (ii) as a corporation contributions to which are deductible under section 170(c)(2) of the Code.

9. No part of the net earnings or the assets of the Corporation shall inure to the benefit of or be distributed to its members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for

services rendered and to make payments and distributions in furtherance of enumerated corporate purposes.

10. No part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

11. Upon the dissolution of the Corporation, it shall, after paying, or making provisions for the payment of, all of the debts, expenses and liabilities of the corporation, distribute all of its assets to such organization or organizations that are: (i) organized and operated exclusively for charitable, educational or scientific purposes to support the delivery of health care in Buffalo, New York to medically underserved populations, and which shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Code; and (ii) affiliated with Erie County Medical Center in the City of Buffalo, County of Erie, State of New York, subject to the approval of a Justice of the Supreme Court of the State of New York. If eligible distributee corporations do not exist, or are deemed ineligible by a final order of a court of competent jurisdiction, all available assets on dissolution shall be distributed by order of a Justice of the Supreme Court of the State of New York, Erie County to such organization or organizations, as said Court shall determine, which are organized and operated in such manner as, in the judgment of the Court, will best accomplish the enumerated purposes for which the Corporation was formed.

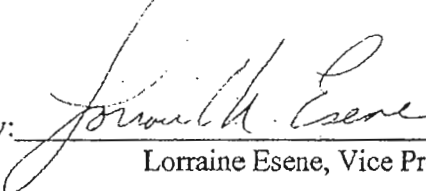
12. All references herein to provisions of the Internal Revenue Code or the Code shall be deemed to include the corresponding provisions of future United States Internal Revenue Laws.

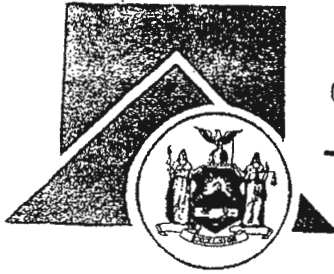
13. This Certificate may be amended only by the affirmative vote of at least two-thirds (2/3) of the entire Board of Directors of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this Restated Certificate of Incorporation of COMMUNITY HEALTH CENTER OF BUFFALO, INC., as authorized by the Unanimous Written Consent of the Board of Directors of the Corporation, and affirm that the statements made herein are true, under penalties of perjury, this 15 day of Dec., 1999.

CHC OF BUFFALO DEVELOPMENT CORP.

By:


Lorraine Esene, Vice President



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

PUBLIC HEALTH COUNCIL

February 9, 2000

Dr. Vincent J. Thompson
Chief Executive Officer
Community Health Center of Buffalo, Inc.
462 Grider Street
Buffalo, New York 14215

Re: Restated Certificate of Incorporation of CHC of Buffalo Development Corp.

Dear Dr. Thompson:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 22nd day of October, 1999, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of CHC of Buffalo Development Corp., dated December 15, 1999.

Sincerely,

Donna Peterson
Karen S. Westervelt *for*
Executive Secretary



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

REGIONAL OFFICE DIVISION
BUFFALO REGIONAL OFFICE

(716) 853-8480

February 15, 2000

Mary C. Raymond
Damon & Morey
1000 Cathedral Place
298 Main Street
Buffalo NY 14202-4096

Re: **Restated Certificate of Incorporation of CHC of Buffalo Development Corp.**

Dear Ms. Raymond:

This letter will confirm our receipt and review of the proposed Restated Certificate of Incorporation of CHC of Buffalo Development Corp. and the Department of Health and Public Health Council's approvals. Please be advised that the Attorney General has no objection to the filing of the Restated Certificate of Incorporation with the Secretary of State upon judicial approval.

Please provide this office with a copy of the judicially approved restated certificate and with proof of its filing with the Secretary of State so that we may complete our file in the matter. If you have any questions, please feel free to contact me at the above number.

Thank you for your cooperation.

Very truly yours,

WILLIAM D. MALDOVAN
Assistant Attorney General

WDM:cmo

13

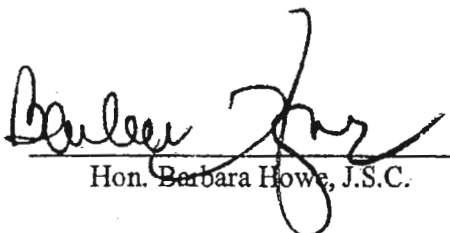
SUPREME COURT
STATE OF NEW YORK :: COUNTY OF ERIE

In the Matter of the Application for the Approval of
the filing of A Restated Certificate of Incorporation
of CHC of Buffalo Development Corp.

APPROVAL OF THE
FILING OF A RESTATED
CERTIFICATE OF
INCORPORATION BY A
JUSTICE OF THE
SUPREME COURT

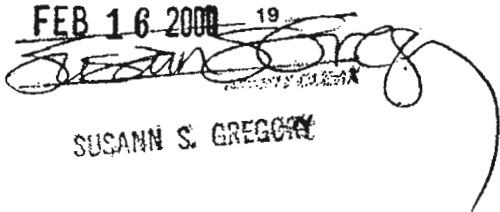
I, Barbara Howe, Justice of the Supreme Court of the State of New York for the Eighth
Judicial District, in which the office of the corporation is located, hereby approve the foregoing
Restated Certificate of Incorporation of CHC of Buffalo Development Corp., and consent that
the same be filed.

 Dated: February 16th, 2000


Hon. Barbara Howe, J.S.C.

GRANTED

FEB 16 2000 19


SUSANN S. GREGORY

BYLAWS
OF
COMMUNITY HEALTH CENTER
OF BUFFALO, INC.

TABLE OF CONTENTS

Topic	Page
Corporate Name	1
Service Area	1
Purposes	1 - 2
Membership	3
Board of Directors	3 - 11
Officers and Duties	11 - 13
Committees	14 - 17
Indemnification	17
Amendments	18
Non-Discrimination	18

**BY-LAWS
OF
COMMUNITY HEALTH CENTER OF BUFFALO, INC.**

ARTICLE I

CORPORATE NAME

The name of the Corporation shall be the **COMMUNITY HEALTH CENTER OF BUFFALO, INC.** (the "Health Center").

ARTICLE II

SERVICE AREA

The primary service area of the Health Center will be the Counties of Erie and Niagara, New York, and shall be further defined by any geographic mandates or restrictions, by catchment area or otherwise, that are applicable under federal or state laws or regulations. The Health Center may maintain additional sites at such other places as the Board of Directors may designate.

ARTICLE III

PURPOSES

With the belief that all citizens are entitled to the highest quality of health and health-related care, it is the goal of the Health Center to provide a comprehensive family health service for the citizens of the Counties of Erie and Niagara, New York who are, medically underserved as defined by applicable statutes and regulations.

Mission

The Health Center will provide quality, culturally sensitive, preventive, and primary health care to the underserved of our community through state of the art clinical and business practices in a clinical teaching environment to reduce health disparities.

Vision

The Health Center envisions a model primary care integrated delivery system that promotes prevention and wellness while ensuring that all people have access to quality, comprehensive and coordinated healthcare.

In pursuit of this mission, vision, and goals, the Health Center is established for the following purposes:

A. Ensure the Health Center operates in compliance with all requirements imposed upon health centers as set forth in Public Health Service Act Section 330(k)(3)(H) of the PHS Act; 42 CFR 51c.303(i), 42 CFR 56.303(i), 42 CFR 51c.304(d), and 42 CFR 56.304(d); and 45 CFR 75.507(b)(2) and otherwise assuring that the Health Center's activities are conducted in compliance with applicable federal, state, and local laws.

B. Ensure a governing Board of Directors operates in compliance with Chapter 751 of Title 10 of the New York Code of Rules and Regulations (Governing Authority - Diagnostic and Treatment Centers) and the New York Not-For-Profit Corporation Law.

C. To supplement health care services presently offered in the Counties of Erie and Niagara, New York, by establishing a Community Health Center, as defined under applicable federal law, that will provide prevention, diagnosis, and treatment of human disease, pain, injury, deformity or physical condition on an outpatient basis in a geographic area where patients are medically underserved by existing institutions.

D. To establish, maintain, and operate a diagnostic and treatment center pursuant to Article 28 of the Public Health Law of the State of New York to prevent, diagnose, and treat human disease, pain, injury, deformity, or physical condition on an outpatient basis.

E. In furtherance of corporate purposes, coordinate the activities described above with other federal, State and local health services delivery projects and programs serving the Counties of Erie and Niagara, New York area, and establish collaborative relationships with such projects programs.

F. To increase community residents' effective use of medical, dental, and psychosocial services by disseminating information to the community about such services.

G. To ensure that the Health Center services meet community needs by promoting and encouraging the employment of qualified adult community residents in all aspects of the delivery of health services.

H. To improve health standards by conducting informational campaigns about health facilities and services available to residents of the area; by promoting and encouraging the development of new or expanded health services; by promoting and encouraging agreements with other health care organizations; by promoting and participating in health planning and development; by promoting more effective local municipal, county, state and federal health-related services within the area; and by promoting equality of care in all health institutions which serve the Health Center patients.

I. The Health Center shall be nonpartisan and nonsectarian, shall take no part in or lend its influence or facilities directly to the nomination, election, or appointment of any

candidate for office or religious movement or any commercial enterprise, and shall adhere to the restrictions on its activities necessary to obtain and maintain tax-exempt status as a public charity, as set forth in its Certificate of Incorporation.

ARTICLE IV

MEMBERSHIP

The Health Center shall have no members, and its Board of Directors shall be nominated and elected in accordance with these Bylaws, the provisions of the New York Not-for-Profit Corporation Law, and the requirements of applicable federal and state laws and regulations.

ARTICLE V

BOARD OF DIRECTORS

Section 1. Number

The Health Center's affairs' governance and direction shall be vested in a Board of Directors having nine to fifteen (9-15) voting members. The number of Directors may be increased by an amendment to these Bylaws, adopted by a two-thirds vote of the entire board, with the minimum number of Directors being no less than nine (9) at any time. As used in these bylaws, the term "entire Board" means the number of Directors within the aforementioned range as fixed by the board from time to time, or, if not so fixed, then the number of Directors that were elected or appointed as of the most recently held election of Directors, as well as any Directors whose terms have not yet expired; provided that in either case, the term "entire Board" shall include any vacancies which have not been filled in accordance with these Bylaws. No decrease in the number of Directors will shorten the term of any incumbent Director. All of the Directors will be at least 18 years of age.

Section 2. Meetings

A. The board of directors' annual meeting shall be held within six (6) months of the fiscal year-end in place of the regular board meeting. Regular meetings of the board shall be held at least once per month. Regular meetings of the board may be held without notice if the Board Annual Report fixes the time and place of such meetings. At the annual meeting of the board, the Chair and Treasurer will present to the board a report, verified by the Chair and Treasurer, showing in appropriate detail the following:

- (1) the assets and liabilities, including the trust funds, of the Health Center as of the end of a 12-month fiscal period of the Health Center terminating not more than six months before said meeting;
- (2) the principal changes in assets and liabilities, including trust funds, during the said fiscal period;

- (3) the revenue or receipts of the Health Center, both unrestricted and restricted to particular purposes, during the said fiscal period; and
- (4) For both general and restricted purposes, the expenses or disbursements of the Health Center during said fiscal period.

Such a report will be filed with the minutes of the annual meeting of the board.

B. Special meetings of the Board of Directors may be held upon the Chair's designation or the written request of any Director upon the written demand of not less than one-fifth of the entire board.

C. Except as otherwise set forth in these Bylaws, a notice of each regular or special meeting of the board stating the time and place of the meeting will be given by the Chair, a Vice-Chair or the Secretary to each director at least three (3) days before the meeting, by mailing the notice, postage prepaid, addressed to each director at his or her residence or usual place of business, or at least two (2) days before the meeting, by delivering the notice to each director personally, by facsimile, by electronic communication or by telephone. A Director's attendance at a meeting without protesting, before or at the commencement of such meeting, the lack of notice to him or her constitutes waiver of notice. A Director also may waive notice by submitting a waiver of notice before or after a meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the director authorized the transmission.

D. The board's performance shall be periodically evaluated at least once a year.

E. Meetings shall be conducted according to simplified parliamentary procedure based on Robert's Rules of Order. The Chair's ruling on the point of order may be overridden by a two-thirds (2/3) vote of those present.

F. Unless otherwise stated in these Bylaws or the New York Not-for-Profit Corporation Law, at all Board of Directors meetings, a quorum for the business transaction shall be at least one-third or a minimum of (5) members of the entire number of members. If a quorum is present at the meeting's commencement, a quorum shall be deemed present throughout such proceedings.

G. Each voting member of the board shall be entitled to one (1) vote on each matter before the board for action. The action of a majority of the voting Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as otherwise specifically provided by statute or by these Bylaws. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

H. Any action required or permitted to be taken by the Board of Directors, or any committee thereof may be taken without a meeting if all members of the Board of Directors, or the committee thereof, consent in writing to the adoption of a resolution authorizing the action. If written, the consent must be executed by the director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the director authorized the transmission. The resolution and unanimous written consent thereto by the board of directors or committee shall be filed with the minutes of the proceedings of the Board of Directors or committee.

I. Any one or more board members, or of any committee thereof, may participate in a meeting of such board or committee by means of a conference, video, telephone, or similar equipment, allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time. Each director can participate in all matters before the board or committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the board or committee.

J. Executive Session meetings shall be held when dealing with confidential matters such as but not limited to individual matters, disciplinary actions, legal and critical business issues. Members of the Board of Directors shall be allowed to attend Executive Sessions of any board or committee unless there is a conflict of interest with respect to the matter being discussed. Barring a conflict of interest, members of the Board of Directors shall be granted access to the Executive Session's approved minutes. The Chair may invite the Chief Executive Officer and such other persons as he or she deems appropriate to attend an executive session. However, members of the public and any staff members shall be excluded from executive sessions, except when specifically invited to give testimony or advice, after which they will be excused. After approval of the Executive Session Minutes, they will be retained in the board book.

K. The board's Secretary or another designee shall maintain complete and accurate minutes of each Board of Directors and committee meeting and distribute such minutes to all board members. It shall retain each notice sent and each resolution and unanimous written consent of the Directors. Said documents shall accurately reflect all business conducted, including findings, conclusions, and recommendations, and shall be maintained in the Health Center's permanent records.

Section 3. Composition

The Board of Directors shall always be constituted in compliance with Section 330 of the Public Health Service Act, as amended, as well as all applicable federal and state regulations and without limiting the foregoing:

A. A majority of the Board of Directors shall be individuals who are served by the Health Center and who, as a group, represent the individuals who live in the Health Center's

service area in terms of demographic factors such as race, ethnicity, and gender, consistent with the requirements of the Federal Bureau of Primary Health Care (such members of the board shall be designated as "Consumer Representatives"). The majority (at least 51%) of the health center board members must be a patient. A patient is an individual who has received at least one service in the past 24 months that generated a health center visit, where both the service and the site where the service was received are within the HRSA-approved scope of the project. A legal guardian of a Health Center consumer who is a dependent child or adult or a legal sponsor of an immigrant consumer may be considered a Consumer Representation for board composition purposes.

B. The remaining (non-Consumer) Board members shall be representative of the community-at-large, shall live or work in the Health Center's Service Area, and shall be selected for their expertise in health care, community affairs, local government, finance and banking, legal affairs, social services, trade unions, and other commercial and industrial concerns (such non-Consumer members of the board shall be designated "Community-at-Large Representatives"). No more than one-half ($\frac{1}{2}$) of these Community-at-Large Representatives shall be individuals who earn more than ten percent (10%) of their annual income from the health care industry, consistent with the requirements of the Federal Bureau of Primary Health Care; and

C. No Board member may be either an employee of the Health Center or an immediate family member (including spouse, child, parent, or sibling by blood or marriage) of such an employee.

Section 4. Election and Terms of Office

A. The board shall be classified into three classes of approximately equal size. The election of such classes of Directors will be staggered so that approximately one-third of the board shall be elected or re-elected each year. Members of the class of Directors whose term is expiring at the time of an annual meeting shall be elected at such annual meeting by a majority vote of the board. They shall serve terms of three (3) years or until his/her successor has been elected and qualified.

B. No Board member shall serve more than nine (9) consecutive years as an officer or director.

C. Rotation of Board Members shall be staggered. Board members shall serve staggered terms of one and two years or one (1), two (2), or three (3) years. Thereafter, Board members shall serve two years or three-year terms with approximately half (one third) of the Directors elected at each annual meeting. Each director shall hold office until the annual meeting when his/her term expires and/or until his/her successor is elected or qualified.

Section 5. Absence

Each Board member is expected to communicate with the Chair or other designee in advance of all Board meetings, stating whether or not s/he can attend or participate by conference telephone or other agreed upon means of communication. Any Board member who is

absent from (3) successive Board meetings or fails to participate for a full year shall be deemed to have resigned due to non-participation, and his/her position shall be declared vacant unless the board affirmatively votes to retain that director as a member of the board.

Section 6. Vacancies

Vacancies on the Board, including those created by an increase in the number of Directors, may be filled for the unexpired term at any duly constituted meeting by a majority vote of the board. All vacancies shall be filled within ninety (90) days of notification of the vacancy and shall be made in a manner that assures compliance with federal regulations regarding Board composition. Any Director so elected by the board members shall hold office until the next succeeding annual meeting of the board or until his/her successor is elected and qualified.

Section 7. Compensation

No member of the board will receive a salary or compensation for services as a Board member, except that the members serving on the board may be reimbursed for transportation cost and other costs incidental to attending Board and Committee meetings and other such official functions as may be authorized by the board.

Section 8. Removal and Resignation

A. Removal

Any Director may be removed for cause at any time by a majority vote of the Board. In the board's discretion, cause for removal may include, but is not limited to: unexplained absence from three (3) consecutive Board meetings; conduct detrimental to the interests of the Health Center; refusing to render reasonable assistance in carrying out the Health Center's purposes, or suspension or debarment from participation in any federal or state health care program.

B. Resignation

Except as otherwise required by law, any Director may resign at any time by giving written notice of such resignation to the board. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective.

Section 9. Appointments to Medical Staff

The Board of Directors **may** approve the appointment and reappointment of ~~all~~ Medical Staff members at the Medical Director's recommendation. The Medical Director will review each current Medical Staff member's clinical privileges and give his/her recommendation to the board concerning such reappointments at least every two (2) years, in accordance with Article 28 of the New York Public Health Law and 10 NYCRR, Chapter 751, and as further set forth in Article VIII of these Bylaws. The By-Laws, rules, and regulations of the Medical Staff shall also be subject to the board's approval.

Section 10. Board Role Upon Dissolution

No Board member, officer, or employee shall be entitled to share in the distribution of any of the corporate assets upon the Health Center's dissolution. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Health Center, whether voluntary or involuntary, all of the assets of the Health Center then remaining in the hands of the board, after all, debts have been satisfied, shall be promptly and appropriately distributed, transferred, conveyed, delivered and paid over, as required by the Health Center's Certificate of Incorporation and in accordance with the New York Not-for-Profit Corporation Law.

Section 11. Independent Directors

A. As used in these bylaws, the term "Independent Director" shall have the meaning set forth in Section 102(a) (21) of the NPCL, as amended from time to time. As of May 27, 2017, "Independent Director" means a Director who: (i) is not, and has not been within the last three years, an employee or a Key Person of the Health Center or an Affiliate of the Health Center, and does not have a Relative who is, or has been within the last three years, a Key Person of the Health Center or an Affiliate of the Health Center; (ii) has not received, and does not have a Relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the Health Center or an Affiliate of the Health Center; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a Relative who is a current officer of or has a substantial financial interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the Health Center or an Affiliate of the Health Center if the amount paid by the Health Center to the entity or received by the Health Center from the entity for such property or services, in any of the last three fiscal years, exceeded the lesser of ten thousand dollars or two percent of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than five hundred thousand dollars; twenty-five thousand dollars if the entity's consolidated gross revenue was five hundred thousand dollars or more but less than ten million dollars; one hundred thousand dollars if the entity's consolidated gross revenue was ten million dollars or more; or (iv) is not and does not have a Relative who is a current owner, whether wholly or partially, director, officer or employee of the Health Center's outside auditor or who has worked on the Health Center's audit at any time during the past three years.

B. For purposes of this section, the terms: "compensation" does not include reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director as permitted by paragraph (a) of section 202 (General and special powers) of the New York Not-For-Profit Corporation Law; and "payment" does not include charitable contributions, dues or fees paid to the Corporation for services which the Corporation performs as part of its nonprofit purposes, or payments made by the Corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Corporation are available to individual members of the public on the same terms, and such services received by the Corporation are not available from another source.

C. For purposes of this section, the term "Affiliate" shall have the meaning set forth in Section 102(a)(19) of the NPCL, as amended from time to time. As of May 27, 2017, an Affiliate of a corporation means any entity controlled by, or in control of, such Corporation.

D. For purposes of this section, the term "Key Person" shall have the meaning set forth in Section 102(a)(25) of the NPCL, as amended from time to time. As of May 27, 2017, "Key Person" means any person, other than a Director or officer, whether or not an employee of the Corporation, who (i) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of Directors and officers; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or (iii) alone or with others controls or determines a substantial portion of the Corporation's capital expenditures or operating budget.

E. For purposes of this section, the term "Relative" shall have the meaning set forth in Section 102(a)(22) of the NPCL, as amended from time to time. As of May 27, 2017, "Relative" of an individual means (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers, and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

Section 12. Powers of the Board

The board shall have the following specific powers and responsibilities:

- Develop and approve bylaws that specify the responsibilities of the board;
- Assure that the center is operated in compliance with applicable Federal, State, and local laws and regulations;
- Hold monthly meetings and record in meeting minutes the board's attendance, key actions, and decisions;
- The health center must develop its overall plan for the Health Center Program project under the direction of the governing board;
- Approve the hiring, annual evaluation, and dismissal of the Project Director/Chief Executive Officer (CEO) of the Health Center who is an agent of, and accountable to, the board;
- Adopt and periodically update the Health Center's policies for the conduct of the Health Center Program project, including scope and availability of services, location and hours of services, decisions whether to sub-award or contract for a substantial portion of services;

- Adopt and periodically update the Health Center's policies for financial management practices, including a system to assure accountability for center resources including periodically reviewing the financial status of the health center and the results of the annual audit to ensure appropriate follow-up actions are taken;
- Adopt policy for eligibility for services, including criteria for partial payment schedules;
- Adopt and periodically update the Health Center's personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;
- Adopt health care policies including quality-of-care audit procedures;
- Review and approve the annual budget, priorities, and eligibility for services (including criteria for partial payment schedules) and applications;
- Review and approve health center services;
- Review and approve location and hours of operation of health center sites annually;
- Select an independent auditor and officially accept the annual audit report, except as delegated to the Audit Committee;
- Evaluate the Health Center's activities, including service utilization patterns, productivity, patient satisfaction, and achievement of objectives, and developing a process for hearing and resolving patient grievances;
- Approve the annual plan, including approving the annual budget, which outlines the proposed uses of both Health Center Program award and non-Federal resources and revenue;
- Conduct and approve an annual strategic planning process and translating strategic planning goals into operational planning objectives;
- Provide direction for long-range planning, including but not limited to identifying health center priorities and adopting a three-year plan for financial management and capital expenditures;
- Ensure that a process is developed for hearing and resolving patient grievances;

- Evaluate the Health Center's achievements at least annually, and using the knowledge gained to revise its mission, goals, objectives, plans, and budgets as may be appropriate and necessary;
- Approve applications related to the Health Center Program and projects;
- Approve the Health Center's Change in Scope (CIS) request before submission to HRSA.

Section 13. Reserved Powers/No Third-Party Power

The board shall reserve to itself all management powers not otherwise delegated in these Bylaws. No third party may be granted approval or veto rights regarding any of the board's powers.

Section 14. Action by Individual Board Member

No individual Board member shall act for the board, except as may be specifically authorized by the board. Board members shall refrain from giving personal advice or directives to any Health Center staff.

ARTICLE VI

OFFICERS AND DUTIES

Section 1. Officers

The Health Center officers shall consist of a Chair, Vice Chair, Secretary, Treasurer, and Chief Executive Officer. The board may also elect such other officers as it may from time to time determine. Except for the Chief Executive Officer, all officers shall be elected by the board by majority vote, shall be chosen from among the Directors. Except for the Chief Executive Officer, no officer of the Health Center shall be compensated for the performance of his or her duties. For the avoidance of doubt, no employee of the Health Center shall serve as Chair or Vice-Chair of the Board or hold any other title with similar responsibilities except if the board approves such employee's service by a two-thirds vote of the entire board, and the board contemporaneously documents in writing the basis for its approval.

Section 2. Chair

The Chair shall preside at all meetings of the Board and Executive Committee; shall prepare an agenda for Board meetings in consultation with the Chief Executive Officer; shall be an *ex-officio* member of all committees except the Nominating Committee and the Audit Committee (unless the Chair qualifies as an Independent Director), and shall perform all such duties as are incidental to the office and are properly required.

The Chair shall execute the directions of the board, provide the board with such advice, information or reports as may be appropriate or as the board may require, represent the Health Center in its relationships with other agencies and organizations, appoint committee chairpersons and execute documents on behalf of the Health Center, including contracts, deeds, mortgages, bonds or other instruments, except where the board expressly delegates the signing of such document or instrument to another officer or agent of the Health Center or as otherwise required by law. The Chair shall discharge all duties incident to the office of Chair and such other duties as may be prescribed by the board from time to time.

Section 3. Vice-Chair

The Vice-Chair of the Health Center shall act as Chair in the Chair's absence, and in so acting shall have all the rights and responsibilities of the Chair. The Vice-Chair shall have such other powers and perform such other duties as prescribed by the Board or the Chair.

Section 4. Secretary

The Secretary shall have charge of all papers, keep such records, make such reports and perform such duties as are incidental to the office and properly required by the Health Center. With staff support, the Secretary shall keep accurate minutes of all meetings of the Board and Executive Committee; shall be responsible for all correspondence of the board; and shall keep up-to-date membership rosters of the board and the board's committees.

Section 5. Treasurer

The Treasurer shall oversee the Health Center's fiscal affairs and shall serve as Chairperson of the Budget and Finance Committee and shall keep or cause to be kept correct and accurate accounts of the properties and financial transactions of the Health Center. The Treasurer shall ensure:

- (1) that the Health Center maintains complete and accurate financial records;
- (2) that proper controls are effectively used over all the Health Center's funds and other assets;
- (3) that an annual budget is prepared by the Chief Executive Officer and is submitted to the board at least sixty (60) days before the beginning of the budget year; and
- (4) An account of the Health Center's financial condition is made at all regular and annual meetings of the board.

The Treasurer shall also perform all duties incident to the office and other duties as may be prescribed by the Board or the Chair.

Section 6. Chief Executive Officer

The Board of Directors shall select and employ a qualified person to serve as the Chief Executive Officer for the Health Center. The Chief Executive Officer shall be the chief executive officer of the Health Center, shall act as the board's direct representative in the day-to-day management of the Health Center, and shall supervise all of its activities, subject only to the policies enacted by the board, or any committee of persons to which the board has specifically delegated supervisory authority for a specific action.

The Chief Executive Officer shall attend such Board meetings as the board shall invite him or her to attend; shall report to the board on the management and operational activities of the Health Center; and shall act as the duly authorized representative of the board in all day-to-day operational matters, except those in which the board has formally designated another person to act.

The Chief Executive Officer shall be responsible for the general and active management of the Health Center's business and shall ensure that all directives, orders, and resolutions of the board are carried into effect. The Chief Executive Officer shall perform such other duties as prescribed by the Board or the Chair. The Chief Executive Officer, as an officer of the Health Center, may delegate some of his or her duties to other officers or employees of the Health Center as he or she may see fit; however, the Chief Executive Officer shall always remain ultimately responsible for the proper performance of any duty which he or she may delegate.

As an employee of the Health Center, the Chief Executive Officer shall be compensated for services performed on behalf of the Health Center.

The Chief Executive Officer shall not be permitted to hold Chair, Vice-Chair, Secretary, or Treasurer of the Health Center.

Section 7. Tenure of Officers

Except for the Chief Executive Officer, who will serve at the discretion of the board and may be removed with or without cause, officers shall be elected for a term of one (1) year and shall serve until their successors are duly elected and qualified and shall not be elected for more than three (3) consecutive terms in the same office. Any officer may be removed for cause at any time by a majority vote of the board. Any officer may resign by giving written notice of such resignation to the Secretary (or, in the case of the Secretary's resignation, to the Chair).

Section 8. Officer Vacancies

If any Board office becomes vacant for any reason, the board has the power to fill such vacancy by majority vote.

ARTICLE VII

COMMITTEES

Section 1. Committees of the Board

The board, by resolution or resolutions adopted by the board, may designate and appoint an Executive Committee and such other committees of the Board as it may deem advisable; provided that in the case of the Executive Committee or similar committee, such designation shall be made by a majority of the entire board. If so designated in these Bylaws, one or more Directors who are the holders of certain positions in the Corporation shall be ex-officio members of specific Committees. Each such Committee of the Board will consist of three (3) or more Directors, and all members of committees of the board must be Directors. Each Committee of the Board will serve at the pleasure of the board and will have, to the extent provided in the resolution establishing the committee, all the board's authority except as otherwise provided by law. The board may not delegate the matters specified in Section 712(a) of the NPCL to any Committee of the Board.

Section 2. Committees of the Corporation

In addition to Committees of the Board, the board may create committees of the Corporation to serve at the board's pleasure and perform tasks assigned by the board. Persons other than Directors may be members of committees of the Corporation. Committees of the Corporation have no authority to act on behalf of the board or bind the board. The board may not delegate the matters specified in Section 712(a) of the NPCL to any Committee of the Board.

Section 3. Executive Committee

A. The Health Center shall have an Executive Committee, which will consist of three or more Directors who are also the Chair, Vice-Chair, Treasurer, and Secretary of the Health Center. Except as otherwise provided by law, the Executive Committee members shall be appointed by a majority of the entire board or a higher vote, if required by law. In the interim between the board meetings, the Executive Committee has all the authority of the board except as otherwise provided by law. All acts of power and authority conferred by the Executive Committee within the scope of its authority are deemed to be and may be specified as being the acts of and under the board's authority.

B. The Executive Committee shall have active control of the conduct of the Health Center's business when the board is not in session, shall act at all times consistent with established Board policies and/or direction, and shall at each meeting of the board report its actions. The Executive Committee shall not have authority over matters specified in Section 712(a) of the NPCL.

C. The Executive Committee may act on a majority vote of its members, and its meetings may be called at any time by the Chair, or in his/her absence, the Vice-Chair.

D. Minutes of all Executive Committee meetings shall be kept and available to all Board members for inspection, except for minutes relating to the evaluation of the Chief Executive Officer, which minutes shall not be made available to such Chief Executive Officer. These minutes shall report committee members' names present and absent, and each motion considered and action is taken thereupon.

Section 4. Budget and Finance Committee

The Budget and Finance Committee shall be a Committee of the Corporation chaired by the Treasurer. The Chief Executive Officer and Comptroller shall be responsible for preparing the annual budget and planning to meet the Health Center's present and future needs. Monthly financial statements of the Health Center will be made available for the Committee's examination and comment. In addition, the Committee reviews the annual budget for approval by the Board. The Committee shall be appointed by the Board, in consultation with the Treasurer, and shall consist of the Treasurer plus not more than three (3) members (in addition to the Treasurer and any other ex-officio members), all of whom shall be Board members. All recommendations of the Committee are subject to the review and approval of the full board.

Section 1. Audit Committee

The Audit Committee will be a Committee of the Board and will consist solely of Independent Directors. The Audit Committee shall oversee the accounting and financial reporting processes of the Health Center and any audit of the Health Center's financial statements. The Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

In addition, such Audit Committee shall:

A. Review with the independent auditor the scope and planning of the audit before the audit's commencement;

B. Upon completion of the audit, review and discuss with the independent auditor: (A) any material risks and weaknesses in internal controls identified by the auditor; (B) any restrictions on the scope of the auditor's activities or access to requested information; (C) any significant disagreements between the auditor and management, and (D) the adequacy of the Corporation's accounting and financial reporting processes;

C. Annually consider the performance and independence of the independent auditor; and

D. Report on the Audit Committee's activities to the board.

Section 2. Governance Committee

The Governance Committee shall be a Committee of the Corporation responsible for reviewing the health center's governance structures and practices. The Committee shall be appointed by the board and shall consist of at least three (3) members (not including any ex-officio members), all of whom shall be Board members.

A) Oversee Board orientation and ongoing Board development, recruitment, and Board self-evaluation processes. (i) The Governance Committee should ensure that the board's composition reflects the demographics of the community served and provides the particular talents needed to accomplish the strategic plan.

B. Review personnel practices and other governance policies and procedures and make recommendations as appropriate.

C. Update the existing job description for the Chief Executive Officer and conduct an annual performance review of the Chief Executive Officer. The outcome of this yearly review would be communicated for inclusion in its compensation review.

D. Review Bylaws of the organization at least every few years and whenever the committee or the board is aware of a change in the law or governance practice inconsistent with one or more provisions of the governing documents.

All recommendations of the Committee are subject to the review and approval of the full board.

Section 3. Other Committees

In addition to other committees of the Board, the board may, as it deems desirable or necessary, establish various other committees of the Corporation, which shall have only those powers specifically delegated to them by the board and in no case shall powers which are not authorized for the Executive Committee or Committees of the Board. The members of such committees shall be appointed by the Chair of the Corporation if there is no Chair with the board's consent.

Provisions Applicable to all Committees:

Reports: Duties It shall be the duty of each committee to make such reports as from time to time may be requested by the board or the Chairperson, or as required by these Bylaws, each committee shall perform such other duties as may be requested by the board.

Procedure. Subject to the By-Laws' provisions and any relevant action of the board, each committee shall establish its own rules and procedures.

Meetings Except as otherwise provided in these Bylaws, each committee shall meet upon the call of the Chairperson thereof, which call shall indicate the date, time, and place of the meeting. If duly recorded in the Minutes of the meeting, each committee member in attendance may waive such notice of the meeting.

Quorum and Voting Requirements. The presence in person of a majority of the committee members shall be sufficient to constitute a quorum for the transaction of business. Action by the majority of the committee members present at such meeting shall constitute the action of the committee.

Minutes. All committees shall maintain the minutes of the meetings.

ARTICLE VIII

INDEMNIFICATION

A. The Health Center shall indemnify, to the maximum extent permitted by law, any person made or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that:

(1) Such person, his/her testator or intestate, was a Director or officer of the Health Center; or

(2) Such person, his/her testator or intestate, served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprises in any capacity, providing such person, his/her testator or intestate, was a Director or officer of the Health Center and served such other Corporation, partnership, joint venture, trust, employee benefit plan or other enterprises at the request of the Health Center.

B. Such indemnification shall include the payment of any judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees, actually and necessarily incurred due to such action or proceeding or any appeal therein.

C. Such indemnification shall, in any case, however, apply only when such director or officer acted in good faith for a purpose which he/she reasonably believed to be in the best interests of the Health Center, or, in the case of service for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprises, not opposed to the best interests of the Health Center, and in the case of criminal actions or proceedings, in addition, had no reasonable cause to believe that his/her conduct was unlawful.

D. The Health Center is hereby authorized and directed to purchase and maintain insurance for such indemnification of its Directors and officers to the maximum extent permitted by law, in such amounts as are deemed prudent from time to time.

ARTICLE IX

AMENDMENTS

These Bylaws may be amended by the affirmative vote of at least two-thirds (2/3) of the entire board, at any regular or special meeting of the board, provided a copy of the proposed amendment(s) has been sent to each Board member at least five (5) days before being voted upon. Any Board member shall have the right to offer Bylaw amendments for consideration by the board.

ARTICLE X

NONDISCRIMINATION

No person shall be discriminated against in consideration for any appointment, the position of employment, or treatment by reason of his or her gender, race, creed, age, sexual orientation, disability, or national origin. The Health Center shall adhere to the federal Bureau of Primary Health Care requirements with respect to employment, management, staffing, grant eligibility, and related matters.

These bylaws were reviewed and approved at a meeting of the board of Directors by a two-thirds (2/3) majority voted on February 22, 2021.

Board Secretary

Facility Id. 7885
Certificate No. 1401230R



Effective Date: 04/03/2023
Expiration Date: NONE

State of New York
Department of Health
Office of Primary Care and Health Systems Management
OPERATING CERTIFICATE

Diagnostic and Treatment Center
Community Health Center of Buffalo
34 Benwood Avenue
Buffalo, New York 14214

Operator: Community Health Center of Buffalo Inc
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified:

Dental O/P	Medical Services - Primary Care	
Other Authorized Locations		
Diagnostic and Treatment Center Extension Clinic		
CHCB-BFNC		
Facility ID 15499	Community Health Center of Cheektowaga	Community Health Center of Niagara
421 Monroe Street	Facility ID 9895	Facility ID 9166
Buffalo, New York 14214	934 Cleveland Drive	2715 Highland Ave
	Cheektowaga, New York 14225	Niagara Falls, New York 14303
School Based Diagnostic and Treatment Center Extension Clinic		
Community Health Center of Buffalo, Inc - School		
Based Mobile Dental Equipment		
Facility ID 10027		
34 Benwood Avenue		
Buffalo, New York 14214		
Mobile Diagnostic and Treatment Center Extension Clinic		
Community Health Center of Buffalo Mobile Van		
Facility ID 10014		
35 Industrial Drive		
North Tonawanda, New York 14120		

John Malloy

20231124 Deputy Commissioner, Office of Primary
Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

John Malloy

Commissioner

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 18th day of June 2025, approves the filing of the Certificate of Assumed Name of Community Health Center of Buffalo, Inc., as attached.



MEMORANDUM

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

From: Alexa Nagy, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: May 28, 2025

Subject: Amended and Restated Certificate of Incorporation of Finger Lakes Health Foundation, Inc.

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (“PHHPC”) from Kathy Marks, Department of Health General Counsel;
- 2) An August 1, 2023, letter to Colleen Leonard (Frost) requesting approval to amend the name and powers and purposes stated in Finger Lakes Health Foundation, Inc.’s Certificate of Incorporation from the legal counsel’s firm for the Corporation, and a signed affidavit sworn to on July 31, 2023;
- 3) A Proposed Amended and Restated Certificate of Incorporation of Finger Lakes Health Foundation, Inc., signed and dated July 31, 2023;
- 4) A Certificate of Merger of Soldiers and Sailors Memorial Hospital Foundation, Inc. into Geneva Regional Health Foundation, Inc., to be renamed Finger Lakes Health Foundation Inc., and annexed documents (including Public Health Council (“PHC”) Approval Letter and Attorney General approval letter);
- 5) A Certificate of Amendment of the Certificate of Incorporation of Finger Lakes Health Foundation, Inc., and annexed documents (including Public Health Council (“PHC”) Approval Letter);
- 6) A photocopy of the original Certificate of Incorporation, and accompanying documents, for Finger Lakes Health Foundation, Inc., originally filed as Waterloo Memorial Hospital, dated March 25, 1920, and filed April 23, 1920;
- 7) A photocopy of the Resolution of the Board of Directors of Finger Lakes Health Foundation, Inc., dated September 21, 2021, approving of and authorizing a formal alignment of clinical service offerings;

- 8) A photocopy of the Resolution of the Board of Directors of Finger Lakes Health Foundation, Inc., dated July 24, 2023, approving of and authorizing the changes to the Certificate of Incorporation and accompanying changes;
- 9) A photocopy of the Resolution of the Board of Directors of Finger Lakes Health Foundation, Inc., dated July 26, 2023, approving of and authorizing the sole member of the Finger Lakes Health Foundation, Inc.; and
- 10) A photocopy of the Secretary's Certificate for the Resolution of the Board of Directors of Finger Lakes Health Foundation, Inc., dated August 1, 2023.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: May 28, 2025

Subject: Amended and Restated Certificate of Incorporation of Finger Lakes Health Foundation, Inc.

Finger Lakes Health Foundation, Inc. ("FLHF") requests Public Health and Health Planning Council ("PHHPC") approval of a proposed Amended and Restated Certificate of Incorporation.

FLHF is a New York not-for-profit corporation which was originally incorporated in 1920 to operate Waterloo Memorial Hospital. In 1992, with the approval of the Public Health Council ("PHC"), the entity changed its name to Geneva Regional Health Foundation, Inc., removed hospital operation from its business purpose and began operating as a not-for-profit foundation to support a regional health system in the Finger Lakes. In 2002, with the approval of the PHC, Geneva Regional Health Foundation, Inc. merged with Soldiers and Sailors Memorial Hospital Foundation, Inc. and adopted its current name. FLHF now seeks to amend its Certificate of Incorporation in connection with a transaction wherein The University of Rochester became the sole member of FLHF's parent corporation, Finger Lakes Regional Health System, Inc., doing business as Finger Lakes Health.

Presently, PLHF wishes to make various ministerial changes to its Certificate of Incorporation including changing its address for service of process and deleting provisions which are no longer applicable under its current operating structure. The proposed July 31, 2023, Amended and Restated Certificate of Incorporation of the Corporation was authorized by the President and CEO of FLHF's sole member.

Because the Department of Health and PHC previously approved FLHF's 1992 Amendment to its Certificate of Incorporation and its 2002 merger transaction, PHHPC approval of FLHF's Amended and Restated Certificate of Incorporation is required.

There is no legal objection to the proposed Amended and Restated Certificate of Incorporation.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

350 BEDFORD STREET • STAMFORD, CONNECTICUT 06901

TEL (203) 316-0483 • FAX (203) 399-0505

www.garfunkelwild.com

FILE NO.: 12819.0004

August 1, 2023

Ms. Colleen Frost
Executive Secretary, Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Via FEDERAL EXPRESS: 203-399-0514

Re: Request for Consent to Amend and Restate the Certificate of Incorporation of
Finger Lakes Health Foundation Inc. (the "Corporation").

To Whom It May Concern:

I enclose a copy of the proposed Amended and Restated Certificate of Incorporation of the Corporation. We request Public Health and Health Planning Council and Department of Health approval of this proposed Amended and Restated Certificate of Incorporation or a letter from the Department of Health stating that no formal approval of the Department of Health or the Public Health and Planning Council is required. This document is being filed in connection with the closing of a transaction whereby the University of Rochester is being added as the new sole member of the Corporation's sole member, Finger Lakes Regional Health System, Inc., dba Finger Lakes Health. The certificate will be amended and restated as follows:

- (a) The preamble to the Certificate of Incorporation is hereby deleted in its entirety.
- (b) Paragraph First relating to the name of the Corporation is hereby amended in its entirety to read as set forth in paragraph First of the Restated Certificate of Incorporation.
- (c) A new paragraph Second relating to the Corporation being a corporation as defined under the N-PCL is added to read as set forth in paragraph Second of the Restated Certificate of Incorporation.
- (d) A new paragraph designating the sole member of the Corporation is hereby added to read as set forth in paragraph Third.

- (e) Paragraph Second (a), (b), and (c) relating to the purposes of the Corporation is amended in its entirety to read as set forth in paragraph Fourth of the Restated Certificate of Incorporation.
- (f) A new paragraph specifying certain powers reserved to the sole Member of the Corporation is hereby added to read as set forth in paragraph Fifth.
- (g) Paragraphs (d), (e) (g), and (i) of paragraph Second relating to tax exempt purposes are hereby deleted in their entirety, and a new paragraph Ninth is hereby added relating to tax exempt purposes of the Corporation.
- (h) Paragraph (h) of paragraph Second relating to dissolution of the Corporation is amended in its entirety to read as set forth in paragraph Tenth of the Restated Certificate of Incorporation.
- (i) Paragraph (f) of paragraph Second relating to no other activities of the Corporation is deleted in its entirety and a new paragraph relating to no other activities is added to read as set forth in paragraph Twelfth of the Restated Certificate of Incorporation.
- (j) Paragraph Sixth relating to the annual meeting of the Corporation is hereby deleted in its entirety.
- (k) A new paragraph relating to the Corporation's address for service of process is added to read as set forth in as paragraph Eleventh of the Restated Certificate of Incorporation.
- (l) Paragraph Fourth relating to the number of directors is deleted in its entirety.
- (m) Paragraph Fifth relating to the initial board of directors of the Corporation is hereby omitted in its entirety.
- (n) Paragraph Sixth relating to the annual meeting of the Corporation is deleted in its entirety.
- (o) Paragraph Seventh relating to the duration of the Corporation is renumbered as paragraph Sixth.
- (p) Paragraph Third relating to the location of principal office of the Corporation is deleted in its entirety and a new paragraph regarding the location of the office of the Corporation is added to read as set forth in paragraph Seventh of the Restated Certificate of Incorporation.

This amendment is being filed subsequent to the consent of the Sole Member to make the changes stated above and to restate the Corporation's Certificate of Incorporation.

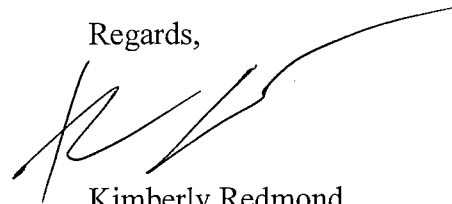
GARFUNKEL WILD, P.C.

August 1, 2023
Page 3

Also enclosed to aid you in your review are copies of the filed Certificate of Incorporation and all subsequent amendments to the Certificate of Incorporation of the Corporation. Also enclosed is an affidavit of the President and CEO of the Corporation, attesting that the Certificate of Incorporation documents provided herein are true, correct and complete.

Please contact me at (203) 399-0514 or via e-mail at kredmond@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to be 'KR', with a long, sweeping horizontal line extending to the right.

Kimberly Redmond
Paralegal

Cc: Barbara D. Knothe, Esq.
Diane Caselli, Esq.

GARFUNKEL WILD, P.C.

Affidavit

STATE OF NEW YORK

COUNTY OF Ontario

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)

The undersigned, Jose Acevedo, M.D., President and CEO, being duly sworn, deposes and says:

1. I am the duly elected President and CEO of Finger Lakes Health Foundation, Inc. (the "Corporation"). The Corporation is a New York not-for-profit corporation located in Ontario County.
2. The documents enclosed herein, all of which comprise the Certificate of Amendment of the Certificate of Incorporation, the Restated Certificate of Incorporation, Certificate of Incorporation and all subsequent Amendments to the Certificate of Incorporation, have been examined by me and to the best of my knowledge and belief, the contents thereof are true, correct and complete.

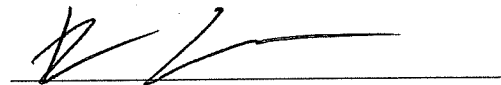
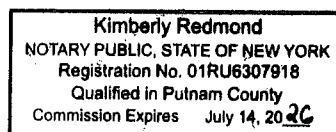
Dated: July 31, 2023



Name: Jose Acevedo, MD
Title: President and CEO

Sworn to before me this

31st day of July, 2023


Notary Public

Amended and Restated Certificate of Incorporation

**RESTATED
CERTIFICATE OF INCORPORATION
OF
FINGER LAKES HEALTH FOUNDATION, INC.**

Under Section 805 of the Not-For-Profit Corporation Law

The undersigned, being the President and CEO of Finger Lakes Health Foundation, Inc. (the "Corporation"), for the purpose of amending and restating the Certificate of Incorporation of the Corporation pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York (the "N-PCL"), hereby certifies:

1. The name of the Corporation is Finger Lakes Health Foundation, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on April 23, 1920, pursuant to the Membership Corporations Law of the State of New York. The name under which the Corporation was formed was Waterloo Memorial Hospital.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL.
4. This amendment and restatement of the Certificate of Incorporation was duly authorized by the Member of the Corporation.
5. The Certificate of Incorporation is hereby amended to effect the following:
 - (a) The preamble to the Certificate of Incorporation is hereby deleted in its entirety.
 - (b) Paragraph First relating to the name of the Corporation is hereby amended in its entirety to read as set forth in paragraph First of the Restated Certificate of Incorporation.
 - (c) A new paragraph Second relating to the Corporation being a corporation as defined under the N-PCL is added to read as set forth in paragraph Second of the Restated Certificate of Incorporation below.
 - (d) A new paragraph designating the sole member of the Corporation is hereby added to read as set forth in paragraph Third below.
 - (e) Paragraph Second (a), (b), and (c) relating to the purposes of the Corporation is amended in its entirety to read as set forth in paragraph Fourth of the Restated Certificate of Incorporation below.
 - (f) A new paragraph specifying certain powers reserved to the sole Member of the Corporation is hereby added to read as set forth in paragraph Fifth below.

- (g) Paragraphs (d), (e) (g), and (i) of paragraph Second relating to tax exempt purposes are hereby deleted in their entirety, and a new paragraph Ninth is hereby added relating to tax exempt purposes of the Corporation.
- (h) Paragraph (h) of paragraph Second relating to dissolution of the Corporation is amended in its entirety to read as set forth in paragraph Tenth of the Restated Certificate of Incorporation below.
- (i) Paragraph (f) of paragraph Second relating to no other activities of the Corporation is deleted in its entirety and a new paragraph relating to no other activities is added to read as set forth in paragraph Twelfth of the Restated Certificate of Incorporation below.
- (j) Paragraph Sixth relating to the annual meeting of the Corporation is hereby deleted in its entirety.
- (k) A new paragraph relating to the Corporation's address for service of process is added to read as set forth in as paragraph Eleventh of the Restated Certificate of Incorporation below.
- (l) Paragraph Fourth relating to the number of directors is deleted in its entirety.
- (m) Paragraph Fifth relating to the initial board of directors of the Corporation is hereby omitted in its entirety.
- (n) Paragraph Sixth relating to the annual meeting of the Corporation is deleted in its entirety.
- (o) Paragraph Seventh relating to the duration of the Corporation is renumbered as paragraph Sixth.
- (p) Paragraph Third relating to the location of principal office of the Corporation is deleted in its entirety and a new paragraph regarding the location of the office of the Corporation is added to read as set forth in paragraph Seventh of the Restated Certificate of Incorporation below.
- (q) A new paragraph relating to the type of Corporation is hereby added to read as set forth in paragraph Eighth of the Restated Certificate of Incorporation below.

6. The Certificate of Incorporation is restated as amended herein to read in its entirety as follows:

**RESTATED CERTIFICATE OF INCORPORATION
OF
FINGER LAKES HEALTH FOUNDATION, INC.**

First: The name of the corporation is Finger Lakes Health Foundation, Inc. (the "Corporation").

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

Third: The sole member of the Corporation shall be Finger Lakes Regional Health System, Inc. (the "Member"), a New York not-for-profit corporation.

Fourth: The purposes for which the Corporation is formed are:

- a. To raise funds for the acquisition, erection, establishment, equipment, organization, management, and maintenance of a regional health system for the residents of the communities centered in Geneva, New York, Penn Yan, New York, and Waterloo, New York, and in the surrounding counties;
- b. To solicit, receive and make distribution of contributions, gifts, grants, bequests, and endowments for the foregoing purposes, primarily for the benefit of Geneva Regional Health System, Inc., and any not-for-profit corporations affiliated with or controlled by Finger Lakes Regional Health System, Inc., including hospitals and residential health care facilities, provided that each qualifies under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and to advance their purposes and objectives; and
- c. To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof as permitted by the Not-For-Profit Corporation Law and the Internal Revenue Code of 1986, as amended.

Fifth: In addition to all other rights and powers of membership prescribed by New York Law, this Certificate of Incorporation, and/or the Bylaws of the Corporation, the following governance and management powers shall be reserved to the Member:

- (a) approve the Corporation's strategic plans;
- (b) approve the Corporation's capital and operating budgets;
- (c) approve the Corporation's incurrence of debt, which for this purpose shall mean indebtedness that is greater than \$100,000, but it shall not include indebtedness for any expenditure identified in the Corporation's approved operating or capital budgets;
- (d) approve the appointment of, and annual compensation to the President and CEO of the Corporation; provided that the President and CEO of the Corporation in office as of August 1, 2023 shall continue to serve in such capacity pursuant to any employment contracts in effect on that date;

(e) approve any amendment to the Corporation's certificate of incorporation and bylaws;

(f) approve any formation or dissolution of the Corporation or an affiliate of the Corporation, or the Corporation's participation in any joint venture arrangements; and

(g) approve participation of the Corporation in a demonstration project such as bundling arrangements, accountable care organizations and capitated payment plans.

Sixth: The term of existence and duration of said Corporation shall be perpetual.

Seventh: The office of the Corporation is to be located in the County of Ontario, State of New York.

Eighth: The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

Ninth: The following language relates to the Corporation's tax-exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in paragraph Fourth above.

(a) Notwithstanding any other provision of this certificate, the Corporation is organized exclusively for charitable purposes; the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, or officer of the Corporation or any private individual, other than an organization described in Section 501(c)(3) of the Code, except that reasonable compensation may be paid for services rendered to or for the Corporation. No member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Code. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office

(d) Notwithstanding any other provision of this Certificate, if at any time or times the Corporation is a private foundation within the meaning of Section 509 of the Internal Revenue Code of 1986, as amended (the "Code"), then during such time or times:

(1) The Corporation shall not engage in any act of self-dealing, as defined in Section 4941(d) of the Code;

(2) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax under Section 4942 of the Code;

(3) The Corporation shall not retain any excess business holdings, as defined in Section 4943(c) of the Code;

(4) The Corporation shall not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

Tenth: Upon dissolution of the Corporation, and after payment of all just debts and liabilities, all remaining assets of the Corporation shall be distributed by the Board of Directors among Finger Lakes Regional Health System, Inc., Geneva General Hospital, Soldiers and Sailors Memorial Hospital of Yates County, Geneva Nursing Home, Inc., Geneva Nursing Home II, Inc., Huntington Nursing Home, Inc., and/or such other not-for-profit corporation as are affiliated with or controlled by them, provided that they then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. If none of such corporations and their affiliates shall so qualify at the time of dissolution, or, if none of said organizations are then in existence, or, if none of said organizations are willing and able to accept said assets, then the Board of Directors shall distribute such assets to such other organization(s) that are organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended such organization or organizations to be selected by the Board of Directors of the Corporation. Any assets not so disposed of shall be distributed pursuant to an order of a Justice of the Supreme Court of the State of New York, exclusively for such purposes or to such organizations as said court shall determine. The disposition of assets shall be subject to any designation or restrictions originally placed on the assets, if acquired by grant, bequest or donation, unless such designation or restrictions shall be released by order of a court having jurisdiction thereof.

Eleventh: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon them is: Attn: Administration Department, 196 North Street, Geneva, New York 14456.

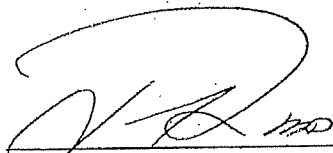
Twelfth: The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body. No consent or approval is required. Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (2) establish

operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law (SSL); or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

This amendment and restatement of the Certificate of Incorporation was duly authorized by the Member of the Corporation.

[Signature on next page]

IN WITNESS WHEREOF, I have made and subscribed this certificate and hereby affirm
under the penalties of perjury that its contents are true this 31st day of July, 2023.

A handwritten signature in black ink, appearing to read 'J. Acevedo MD', written over a horizontal line.

Name: Jose Acevedo, MD
Title: President and CEO

RESTATED CERTIFICATE OF INCORPORATION
OF
FINGER LAKES HEALTH FOUNDATION, INC.

Under Section 805 of the New York Not-for-Profit Corporation Law

FILED BY:

BARBARA KNOTHE, ESQ.
GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NEW YORK 11021

**Certificate of Incorporation and all
subsequent Amendments to the Certificate of
Incorporation**

FILING RECEIPT

=====

ENTITY NAME: FINGER LAKES HEALTH FOUNDATION, INC.

DOCUMENT TYPE: MERGER (DOM. NFP)
PURPOSES NAME PROVISIONS

COUNTY: SENE

SERVICE COMPANY: CORPORATION SERVICE COMPANY

SERVICE CODE: 45

CONSTITUENT NAME: SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC.

=====

FILED:12/20/2002 DURATION:***** CASH#:021220000747 FILM #:021220000713

ADDRESS FOR PROCESS

EFFECT DATE

12/20/2002

REGISTERED AGENT



=====

FILER	FEES	140.00	PAYMENTS	140.00
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HINMAN HOWARD & KATTELLLLP	FILING	30.00	CASH	0.00
80 EXCHANGE ST PO BOX 5250	TAX	0.00	CHECK	0.00
	CERT	0.00	CHARGE	0.00
	COPIES	10.00	DRAWDOWN	140.00
ALBINGHAMTON, NY 13902-5250	HANDLING	100.00	BILLED	0.00
			REFUND	0.00

=====

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **DECEMBER 20, 2002**



A handwritten signature in black ink, appearing to read "R. A. S.", written over the printed title.

Secretary of State

BIT B

EXHIBIT B

SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC.

GENEVA REGIONAL HEALTH FOUNDATION, INC.

The undersigned being respectively the Chairman and Secretary of GENEVA REGIONAL HEALTH FOUNDATION, INC., and the President and Secretary of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. certify:

(b) The name of the surviving corporation is GENEVA REGIONAL HEALTH FOUNDATION, INC., to be renamed FINGER LAKES HEALTH FOUNDATION, INC. by the filing of this Certificate of Merger.

(a) Paragraph First of the Certificate is amended to change the name of the corporation from “Geneva Regional Health Foundation, Inc.” to “Finger Lakes Health Foundation, Inc.” Paragraph First of the Certificate of Incorporation is hereby amended to read as follows:

(b) Subparagraph (a) of Paragraph Second of the Certificate is amended to include the residents of Penn Yan, New York. Subparagraph (a) of Paragraph Second is hereby amended to read as follows:

"a. To raise funds for the acquisition, erection, establishment, equipment, organization, management, and maintenance of a

regional health system for the residents of the communities centered in Geneva, New York, Penn Yan, New York and Waterloo, New York, and in the surrounding counties;"

(c) Subparagraph h. of Paragraph Second of the Certificate is amended to include Soldiers and Sailors Memorial Hospital of Yates County and Geneva Nursing Home II, Inc. and to recognize the change in corporate name by Geneva Regional Health System, Inc. and Geneva General Hospital Nursing Home Company, Inc. Subparagraph h. of Paragraph Second is hereby amended to read as follows:

"h. Upon dissolution of the corporation, and after payment of all just debts and liabilities, all remaining assets of the Corporation shall be distributed by the Board of Directors, among Finger Lakes Regional Health System, Inc., Geneva General Hospital, Soldiers and Sailors Memorial Hospital of Yates County, Geneva Nursing Home, Inc., Geneva Nursing Home II, Inc., Huntington Nursing Home, Inc., and/or such other not-for-profit corporations as are affiliated with or controlled by them, provided that they then qualify under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of such corporations and their affiliates shall so qualify at the time of dissolution, or, if none of said organizations are then in existence, or, if none of said organizations are willing and able to accept said assets, then the Board of Directors shall distribute such assets to such other organization(s) that are organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as exempt organization(s) under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. Any assets not so disposed of shall be distributed by an order of a Justice of the Supreme Court of the State of New York, exclusively for such purposes or to such organizations as said court shall determine. The disposition of assets shall be subject to any designation or restrictions originally placed on the assets, if acquired by grant, bequest or donation, unless such designations or restrictions shall be released by order of a court having jurisdiction thereof.

(d) Paragraph Third of the Certificate is amended to change the principal office of the Corporation from Waterloo, New York to Penn Yan, New York. Paragraph Third is hereby amended to read as follows:

"Its principal office is to be located in the Village of Penn Yan, New York."

3. The effective date of the merger is January 1, 2003.

4. Notwithstanding authorization by members of both corporations, at any time prior to the filing of a Certificate of Merger by the Department of State, this plan of merger may be abandoned either (a) by mutual consent of the boards of directors of the

5

constituent corporations, or (b) by the boards of directors of either corporation, if such board, in its exclusive discretion, determines that to proceed with the merger would adversely affect the corporation or its members because of (1) a breach of a covenant in the Plan by the other constituent corporation, or (2) material litigation is pending against the other constituent corporation. The plan of merger has not been abandoned.

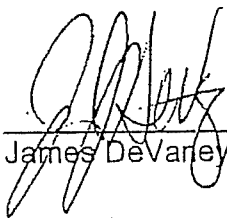
5. The certificate of incorporation of GENEVA REGIONAL HEALTH FOUNDATION, INC., under the name WATERLOO MEMORIAL HOSPITAL was filed by the Department of State on April 23, 1920, and the certificate of incorporation of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC., was filed by the Department of State on August 28, 1984.

6. The merger was authorized at a meeting of the sole member of GENEVA REGIONAL HEALTH FOUNDATION, INC., by vote of two-thirds of the directors of the member entitled to vote and at a meeting of the sole member of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC., by vote of two-thirds of the directors of the member entitled to vote.

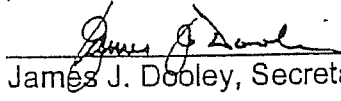
7. Consent to the merger by the Public Health Council shall be attached hereto.

8. Each constituent corporation has one voting member. Neither corporation has any holders of certificate evidencing capital contributions or any subventions.

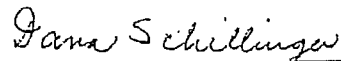
IN WITNESS WHEREOF, we have signed this certificate this 26th day of September, 2002 and affirm that the statements made herein are true under penalties of perjury.



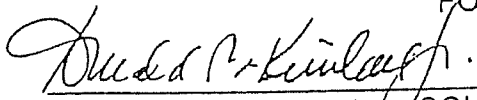
James DeVarney, Chairman, GENEVA REGIONAL HEALTH FOUNDATION, INC.



James J. Dooley, Secretary, GENEVA REGIONAL HEALTH FOUNDATION, INC.



Dana Schillinger, President, SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC.



Donald Kimball, Secretary, SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC.

COPY

PRESENT: Hon. W. Patrick Falvey
Acting Justice Presiding

At the Supreme Court of the
State of New York, County of
Yates, held at the Courthouse,
Penn Yan, New York on
December 11, 2002

STATE OF NEW YORK

SUPREME COURT: COUNTY OF YATES

Application of Geneva Regional Health
Foundation, Inc. and Soldiers and Sailors
Memorial Hospital Foundation, Inc., For an Order
Approving Their Plan of Merger of Soldiers and
Sailors Memorial Hospital Foundation, Inc., into
Geneva Regional Health Foundation, Inc. and
Authorizing the Filing of a Certificate of Merger
Pursuant to Section 907 of the Not-for-Profit
Corporation Law.

**ORDER APPROVING
MERGER**

Index No.: *02-377*

Geneva Regional Health Foundation, Inc. and Soldiers and Sailors Memorial
Hospital Foundation, Inc. have applied for an order pursuant to Section 907 of the Not-
for-Profit Corporation Law approving their Plan of Merger and authorizing the filing of a
Certificate of Merger.

In support of their application, Geneva Regional Health Foundation, Inc. and
Soldiers and Sailors Memorial Hospital Foundation, Inc. have submitted, their petition
dated December 6 and their joint affidavit sworn to September 26, 2002, with attached
exhibits, including the Plan of Merger dated September 17, 2002. The Attorney General
has waived notice and a hearing and certified no objection to the entry of this order.

Upon the foregoing papers, and upon hearing Richard H. Pille, Esq., attorney for
Geneva Regional Health Foundation, Inc. and Soldiers and Sailors Memorial Hospital

4

Foundation, Inc., in support of the application and on motion of Richard H. Pille, Esq., it appearing to the satisfaction of this Court that the interest of the constituent corporations and the public interest would not be adversely affected by their merger it is ordered that:

1. The Plan dated September 17, 2002, for the Merger of Soldiers and Sailors Memorial Hospital Foundation, Inc. into Geneva Regional Health Foundation, Inc., to be renamed Finger Lakes Health Foundation, Inc., is approved.
2. The constituent corporations are authorized to file the Certificate of Merger with the Department of State in accordance with Section 906 of the Not-for-Profit Corporation Law with a certified copy of this order attached thereto.
3. Upon the effective date after the filing of the Certificate of Merger as provided above, all assets of Soldiers and Sailors Memorial Hospital Foundation, Inc. shall be transferred and conveyed to Geneva Regional Health Foundation, Inc. to be renamed Finger Lakes Health Foundation, Inc., subject to the administration of restricted funds and previously unrestricted funds, in accord with the Plan of Merger.

Dated: December 11, 2002
Penn Yan, New York

W. Patrick Felvey
Acting Justice, Supreme Court
Yates County

FILED & ENTERED

ENTER:

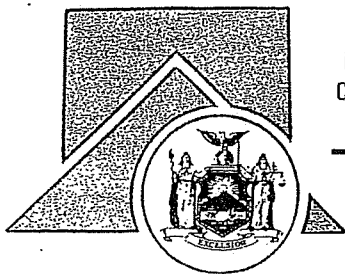
December 12, 2002 3:00pm
Julie D. Betts

YATES COUNTY CLERK

STATE OF NEW YORK, COUNTY OF YATES
I, JULIE D. BETTS, Clerk of the County of Yates
and clerk of the Supreme and County Courts of the county of Yates,
both being Courts of Record having a common seal,
DO HEREBY CERTIFY that I have compared this copy with the
original filed or recorded in this office and that the same is
a true copy of the whole of said original.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the seal of said county and courts on *December 12, 2002*

Julie D. Betts
Yates County Clerk

*1000 10 10 Copy
of Original Document*



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

PUBLIC HEALTH COUNCIL

November 18, 2002

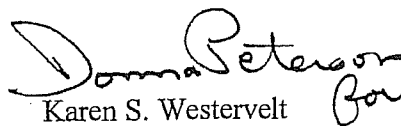
Mr. Richard H. Pille
Hinman, Howard & Kattell, LLP
700 Security Mutual Building
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13902-5250

Re: Certificate of Merger of Soldiers and Sailors Memorial Hospital Foundation, Inc. into Geneva Regional Health Foundation, Inc., to be renamed Finger Lakes Health Foundation, Inc.

Dear Mr. Pille:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15th day of November, 2002, I hereby certify that the Certificate of Merger Soldiers and Sailors Memorial Hospital Foundation, Inc. into Geneva Regional Health Foundation, Inc., to be renamed Finger Lakes Health Foundation, Inc., dated September 26, 2002, is approved.

Sincerely,


Karen S. Westervelt
Executive Secretary

6



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

REGIONAL OFFICE DIVISION
Rochester Regional Office

ELIOT SPITZER
Attorney General

December 4, 2002

Richard H. Pille, Esq.
Hinman, Howard & Kattell, LLP
700 Security Mutual Building
80 Exchange Street - P.O. Box 5250
Binghamton, New York 13902-5250

Re: Soldiers & Sailors Memorial Hospital Foundation, Inc.
to be Merged into Geneva Regional Health Foundation,
Inc., to be Renamed Finger Lakes Health Foundation,
Inc.

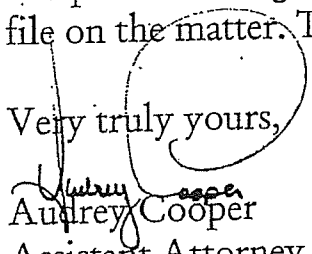
Dear Mr. Pille:

Thank you for providing me with a copy of your petition,
plan of merger, and proposed order and certificate for merger of
the above-referenced not-for-profit corporations.

The Attorney General does not oppose the signing of the
proposed order and the filing of the certificate of merger.

Please send me a copy of the signed order, when entered,
and proof of filing of the certificate of merger, so I may close my
file on the matter. Thank you for your anticipated cooperation.

Very truly yours,


Audrey Cooper
Assistant Attorney General

7

FO21220000713

CERTIFICATE OF MERGER

OF

SOLDIERS AND SAILORS MEMORIAL
HOSPITAL FOUNDATION, INC.

INTO

GENEVA REGIONAL HEALTH FOUNDATION, INC.

Section 904 of the Business Corporation Law

FILED

2002 DEC 20 PM 3:19

3cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 20 2002

TAX \$ 1mb
BY: Genecc

name change
eff 1/1/2003

Filer: Hinman Howard & Kattell, LLP
80 Exchange Street
P.O. Box 5250
Binghamton, NY 13902-5250
Cust. Ref#860200DAV

DRAWDOWN

DEC 20 1 36 PM '02

DEC 17 2 10 PM '02
8

747

Soldiers & Sailors Memorial Hospital Foundation

418 North Main Street • Penn Yan, New York 14527-1085 • 315-531-2050

Resolution of Board of Directors Approving Plan of Merger

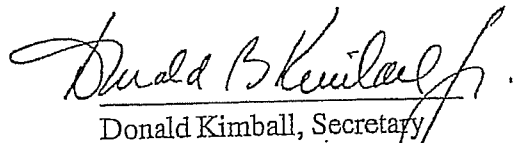
Upon motion made and seconded, the following resolution was adopted by affirmative vote of the entire board:

WHEREAS this corporation, SOLDIERS & SAILORS MEMORIAL HOSPITAL FOUNDATION, INC., has negotiated an agreement to merge into GENEVA REGIONAL HEALTH FOUNDATION, INC. with the surviving corporation to be renamed FINGER LAKES HEALTH FOUNDATION, INC., pursuant to a plan to merger, a copy of which is annexed and

WHEREAS the board is convinced that acceptance of the plan is in the best interest of this corporation and SOLDIERS & SAILORS MEMORIAL HOSPITAL OF YATES COUNTY, it is

RESOLVED that the board adopts the proposed plan of merger and directs the secretary, pursuant to Section 903 of the Not-for-Profit Corporation Law, to call a special meeting of the member of this corporation, SOLDIERS & SAILORS MEMORIAL HOSPITAL OF YATES COUNTY, to be held at 196 North Street, Geneva, New York on September 25, 2002, at 5:00 p.m., for the purpose of submitting the Plan of Merger to a vote of the Directors of the member for the member's approval.

I certify this resolution was
adopted 9/17/02 by the Board:


Donald Kimball, Secretary

9-17-02
(date)



A Member of Finger Lakes Health



Geneva Regional Health Foundation, Inc.

196 North Street • Geneva, New York 14456 • (315) 787-4050

Resolution of Board of Directors Approving Plan of Merger

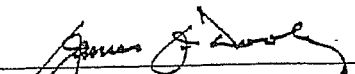
Upon motion made and seconded, the following resolution was adopted by affirmative vote of the entire board:

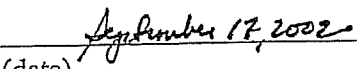
WHEREAS this corporation, GENEVA REGIONAL HEALTH FOUNDATION, INC. has negotiated an agreement for SOLDIERS & SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. to merge into GENEVA REGIONAL HEALTH FOUNDATION, INC., as the surviving corporation, to be renamed FINGER LAKES HEALTH FOUNDATION, INC., pursuant to a Plan of Merger, a copy of which is annexed and

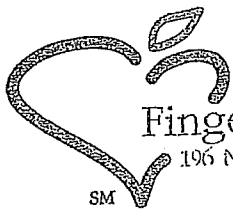
WHEREAS the board is convinced that acceptance of the plan is in the best interest of this corporation and FINGER LAKES REGIONAL HEALTH SYSTEM, INC., it is

RESOLVED that the board adopts the proposed plan of merger and directs the secretary, pursuant to Section 903 of the Not-for-Profit Corporation Law, to call a special meeting of the member of this corporation, FINGER LAKES REGIONAL HEALTH SYSTEM, INC. to be held at 196 North Street, Geneva, New York on September 25, 2002 at 5:00 p.m. for the purpose of submitting the Plan of Merger to a vote of the Directors of the member for the member's approval.

I certify this resolution was
adopted 9/17/02 by the Board:


James J. Dooley, Secretary


(date)

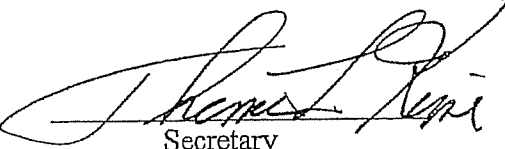


Finger Lakes Health

196 North St. • Geneva, NY 14456
(315) 787-4000

Secretary's Certification

This is to certify that the attached resolution was adopted at the Finger Lakes Health Board of Directors meeting on September 25, 2002.


Secretary

12-4-02
Date

Geneva Regional Health Center
196 North Street • Geneva, NY 14456

Finger Lakes Health Center
196 North Main Street • Geneva, NY 14456

Lakeside Medical Center
271 East Main Street • Watkins, NY 14889

Geneva Regional Health Center
196 North Street • Geneva, NY 14456

Finger Lakes Health Center
196 North Main Street • Geneva, NY 14456

Lakeside Medical Center
271 East Main Street • Watkins, NY 14889

Good Health...We're In It Together!

www.flhealth.org

Geneva Regional Health Center
196 North Street • Geneva, NY 14456

Finger Lakes Health Center
196 North Main Street • Geneva, NY 14456

Lakeside Medical Center
271 East Main Street • Watkins, NY 14889

Geneva Regional Health Center
196 North Street • Geneva, NY 14456

Finger Lakes Health Center
196 North Main Street • Geneva, NY 14456

Lakeside Medical Center
271 East Main Street • Watkins, NY 14889

PLAN OF MERGER
OF
SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC.
INTO
GENEVA REGIONAL HEALTH FOUNDATION, INC.

The following plan of merger has been adopted by the boards of directors of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. and GENEVA REGIONAL HEALTH FOUNDATION, INC., at meetings of the boards held on September 17, 2002 and September 17, 2002, respectively.

1. (a) The names of each constituent corporation participating in the merger are SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. and GENEVA REGIONAL HEALTH FOUNDATION, INC. which was formed under the name of WATERLOO MEMORIAL HOSPITAL.

(b) The name of the surviving corporation is GENEVA REGIONAL HEALTH FOUNDATION, INC. This corporate name will be changed to FINGER LAKES HEALTH FOUNDATION, INC. by the filing of the certificate of merger attached hereto.

2. (a) The sole voting member of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. is SOLDIERS AND SAILORS MEMORIAL HOSPITAL OF YATES COUNTY.

(b) The sole voting member of GENEVA REGIONAL HEALTH FOUNDATION, INC. is FINGER LAKES REGIONAL HEALTH SYSTEM, INC.

(c) Neither of the constituent corporations has issued capital certificates or subventions.

3. The terms and conditions of the merger are as follows:

(a) Until altered, amended or repealed, the attached by-laws of GENEVA REGIONAL HEALTH FOUNDATION, INC. to be renamed FINGER LAKES HEALTH FOUNDATION, INC., (as adopted by its member, GENEVA REGIONAL HEALTH SYSTEM, INC., in its approval of this Plan of Merger), shall take effect at the time the merger becomes effective, and be the by-laws of the surviving corporation. SOLDIERS AND SAILORS MEMORIAL HOSPITAL OF YATES COUNTY will not be a member of the surviving corporation and FINGER LAKES REGIONAL HEALTH SYSTEM, INC. will remain its sole member.

(b) The first annual meeting of the sole member of the surviving corporation held after the effective date of this merger shall be the next annual meeting

provided by the by-laws of FINGER LAKES HEALTH FOUNDATION, INC., the renamed surviving corporation.

(c) The officers of GENEVA REGIONAL HEALTH FOUNDATION, INC., one of the constituent corporations, on the date the merger becomes effective, shall be and remain like officers of the surviving corporation until the board of directors of the surviving corporation elects their respective successors. Each of the current officers of the surviving corporation has submitted his or her resignation as an officer to take effect upon the election of his or her successor after the merger takes effect.

(d) The first regular meeting of the board of directors of the surviving corporation shall be held as soon as practicable after the date on which the merger becomes effective, for the election of officers and other matters, and may be called in the manner provided in the by-laws of FINGER LAKES HEALTH FOUNDATION, INC., the renamed surviving corporation, for the calling of a special meeting of the board of directors.

(e) Each of the current directors of the constituent corporations has submitted his or her resignation as a director, to be effective as of the effective date of the merger and FINGER LAKES REGIONAL HEALTH SYSTEM, INC., in approving this Plan of Merger as sole member of GENEVA REGIONAL HEALTH FOUNDATION, INC., elects the following persons to serve for the terms indicated as successor directors of the surviving corporation effective on the date the merger becomes effective:

<u>Name and Address of Person</u>	<u>Constituent Affiliation</u>	<u>Initial Term</u>
Marilyn James 4264 Champlin Road Penn Yan, NY 14527	Soldiers and Sailors Memorial Hospital Foundation (SSMHF)	one year
Taylor Fitch 3120 Kinney Corners Road Bluff Point, NY 14478	SSMHF	one year
James DeVaney 167 Lafayette Avenue Geneva, NY 14478	Geneva Regional Health Foundation (GRHF)	one year
Richard Sayers 3625 Ridge Run East Canandaigua, NY 14424	GRHF	one year
Dana Schillinger 429 Lake Avenue Keuka Park, NY 14478	SSMHF	two years
Susan Hysør 2756 Coates Road Penn Yan, NY 14527	SSMHF	two years

James Gerling 32 North Brook Street Geneva, NY 14456	GRHF	two years
Gary Shultz 26 North Brook Street Geneva, NY 14456	GRHF	two years
Nancy D'Amico 170 South Avenue Penn Yan, NY 14527	SSMHF	three years
Corinne Stork 1773 N. Main Street Penn Yan, NY 14527	SSMHF	three years
Edward Boudreau 3385 Yost Road Waterloo, NY 13165	GRHF	three years
Catherine Barnard 897 Castle Road Geneva, NY 14456	GRHF	three years
James Dooley 20 Cornwall Avenue Geneva, NY 14456	Finger Lakes Health (FLH)	ex officio
Lawrence Farnand 34 Wincanton Drive Fairport, NY 14450	(FLH)	ex officio
Harold Gray 175 Cornwell Street Penn Yan, NY 14527	(FLH)	ex officio

(f) The surviving corporation shall pay all expenses of carrying this plan of merger into effect and of accomplishing the merger, from the unrestricted funds of each of the constituent corporations, in the same proportion as the total of each constituent corporation's net assets determined prior to the merger bears to the total of the surviving corporation's net assets determined on the effective date of the merger.

(g) When the merger becomes effective the separate existence of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. shall cease and be merged into the surviving corporation, which shall possess all the rights, privileges, powers and franchises of a public as well as of a private nature and be subject to all the restrictions, disabilities and duties of each of the corporations that are

parties to this agreement. Subject to (j) below, the corporation shall be vested with the rights, privileges, powers and franchises of each of the constituent corporations; all property, real personal and mixed; all debts due to each of the corporations on whatever account, and all other things in action or belonging to each of the corporations.

(h) The title to any real estate, whether by deed or otherwise, vested in any of the corporations, shall not revert or in any way be impaired by reason of this merger, provided that all rights of creditors and all liens upon the property of any of the corporations, shall be preserved unimpaired, and all debts, liabilities and duties of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC., shall attach to the surviving corporation, and may be enforced against it to the same extent as if those debts, liabilities and duties had been incurred or contracted by it.

(i) If at any time the surviving corporation considers or is advised that any further assignments or assurances in law or any things are necessary or desirable to vest in the surviving corporation the title to any property or rights of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC., the proper officers and directors of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC., shall execute and make all proper assignments and assurances and do all things necessary to vest title in such property or rights in the surviving corporation.

(j) Each of the constituent corporations holds unrestricted funds, as well as restricted funds, as summarized in the attachment hereto. As a condition to their approval to this merger, the Board of Directors and sole member of each of the constituent corporations pledge to each other that:

(1) The unrestricted funds of SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC. will not be used by the surviving corporation to support activities outside Yates County, and

(2) The unrestricted funds of GENEVA REGIONAL HEALTH FOUNDATION, INC. will not be used by the surviving corporation to support activities outside of Ontario and Seneca Counties.

(3) Unrestricted funds directed by will, grant, gift or otherwise to one of the constituent corporations, and received after the merger by the surviving corporation will be added to and treated as part of the funds described in (1) or (2) above, as appropriate.

(4) All restricted funds, received by the constituent corporations before and by the surviving corporation after the merger will be administered in accord with restrictions applicable to the funds.

4. On the effective date of the merger, the following amendments to the Certificate of Incorporation of the surviving corporation, GENEVA REGIONAL HEALTH FOUNDATION, INC., shall take effect:

(a) Paragraph First of the Certificate is amended to change the name of the corporation from GENEVA REGIONAL HEALTH FOUNDATION, INC. to FINGER LAKES HEALTH FOUNDATION, INC. Paragraph First of the Certificate of Incorporation is hereby amended to read as follows:

"First: The name of the Corporation is FINGER LAKES HEALTH FOUNDATION, INC."

(b) Subparagraph (a) of Paragraph Second of the Certificate is amended to include the residents of Penn Yan, New York. Subparagraph (a) of Paragraph Second is hereby amended to read as follows:

"a. To raise funds for the acquisition, erection, establishment, equipment, organization, management, and maintenance of a regional health system for the residents of the communities centered in Geneva, New York, Penn Yan, New York and Waterloo, New York, and the surrounding counties;"

(c) Subparagraph (h) of Paragraph Second of the Certificate is amended to include Soldiers and Sailors Memorial Hospital of Yates County and Geneva Nursing Home II, Inc. and to recognize the change in corporate name by Geneva Regional Health System, Inc. and Geneva General Hospital Nursing Home Company, Inc. Subparagraph h. of Paragraph Second is hereby amended to read as follows:

"h. Upon dissolution of the corporation, and after payment of all just debts and liabilities, all remaining assets of the Corporation shall be distributed by the Board of Directors, among Finger Lakes Regional Health System, Inc., Geneva General Hospital, Soldiers and Sailors Memorial Hospital of Yates County, Geneva Nursing Home, Inc., Geneva Nursing Home, II, Inc., Huntington Nursing Home, Inc. and/or such other not-for-profit corporations as are affiliated with or controlled by them, provided that they then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of such corporations and their affiliates shall so qualify at the time of dissolution, or, if none of said organizations are then in existence, or, if none of said organizations are willing and able to accept said assets, then the Board of Directors shall distribute such assets to such other organization(s) that are organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. Any assets not so disposed of shall be distributed by an order of a Justice of the Supreme Court of the State of New York, exclusively for such purposes or to such organizations as said court shall determine. The disposition of assets shall be subject to any designation or restrictions originally placed on the assets; if acquired by grant, bequest or donation, unless such designations or restrictions shall be released by order of a court having jurisdiction thereof.

(d) Paragraph Third of the Certificate is amended to change the principal office of the Corporation from Waterloo, New York to Penn Yan, New York. Paragraph Third is hereby amended to read as follows:

"Its principal office is to be located in the Village of Penn Yan, New York."

These amendments are set forth in the attached Certificate of Merger.

5. Notwithstanding authorization by members of both corporations, at any time prior to the filing of a Certificate of Merger by the Department of State, this plan of merger may be abandoned either (a) by mutual consent of the boards of directors of the constituent corporations, or (b) by the boards of directors of either corporation, if such board, in its exclusive discretion, determines that to proceed with the merger would adversely affect the corporation or its members because of (1) a breach of a covenant in the Plan by the other constituent corporation, or (2) material litigation is pending against the other constituent corporation.

6. The effective date of this plan in New York shall be January 1, 2003 provided the Certificate of Merger is filed by the Secretary of State of New York, pursuant to Sections 904 and 906 of the Not-for-Profit Corporation Law of the State of New York within 30 days prior thereto, and if not so filed, shall be the date the Certificate of Merger is thereafter filed.

Dated: Penn Yan, New York
September 17, 2002

SOLDIERS AND SAILORS MEMORIAL HOSPITAL FOUNDATION, INC.

By:

Donald B. Kimball Jr., Secretary
Donald Kimball

GENEVA REGIONAL HEALTH FOUNDATION, INC.

By:

James J. Dooley, Secretary
James J. Dooley

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE
ALBANY, NY 12231

FILING RECEIPT

=====

CORPORATION NAME: GENEVA REGIONAL HEALTH FOUNDATION, INC.

DOCUMENT TYPE : AMENDMENT (DOMESTIC NFP)
PURPOSES PROCESS NAME

COUNTY: SENECA

SERVICE COMPANY : SERVICOR

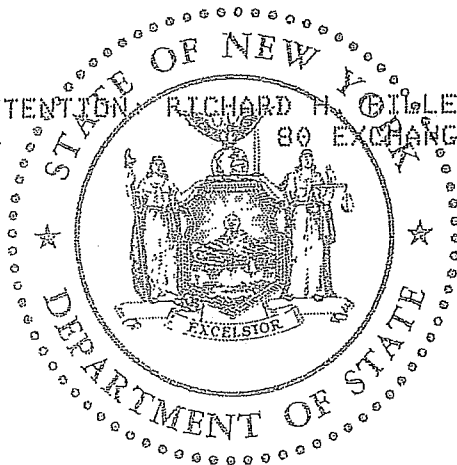
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FILED: 06/30/1992 DURATION: ***** CASH #: 920630000251 FILM #: 920630000222

ADDRESS FOR PROCESS

HINMAN, HOWARD & KATTELL ATTENTION RICHARD H. GILLE, ESQ.
700 SECURITY MUTUAL BUILDING 80 EXCHANGE STREET
BINGHAMTON, NY 13901-3490

REGISTERED AGENT



=====

FILER	FEES	55.00	PAYMENTS	55.00
HINMAN, HOWARD & KATTELL	FILING :	30.00	CASH :	0.00
700 SECURITY MUTUAL BUILDING	TAX :	0.00	CHECK :	0.00
80 EXCHANGE STREET	CERT :	0.00	BILLED:	55.00
BINGHAMTON, NY 13901-3490	COPIES :	0.00		
	HANDLING:	25.00		
			REFUND:	0.00

=====

DOS-1025 (11/89)

State of New York }
Department of State } ss:

065024

I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on

OCT 1 - 1992



Secretary of State

CERTIFICATE OF AMENDMENT
OF THE CERTIFICATE OF INCORPORATION
OF
WATERLOO MEMORIAL HOSPITAL

19206300002
FILED BY:
SERVICO
ALBANY, NEW YORK

Under Section 803 of the Not-For-Profit Corporation Law

James J. Dooley and Donald Wertman, the President and Secretary, respectively, of Waterloo Memorial Hospital, hereby certify:

1. The name of the corporation is Waterloo Memorial Hospital, and there has been no change in the corporate name since its formation.

2. Its Certificate of Incorporation was filed by the Department of State on April 23, 1920, under the Not-For-Profit Corporation Law of the State of New York.

3. Waterloo Memorial Hospital is a corporation as defined in Subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law, and it will remain so after the amendments described in this Certificate of Amendment.

4. The Certificate of Incorporation is amended as follows:

(a) Paragraph First of the Certificate is amended to change the name of the corporation from "Waterloo Memorial Hospital" to "Geneva Regional Health Foundation, Inc.". Paragraph First of the Certificate of Incorporation is hereby amended to read as follows:

"First: The name of the Corporation is
Geneva Regional Health Foundation, Inc."

(b) Paragraph Second of the Certificate is amended to change the purposes and activities of the corporation. The corporation was organized and has been operated as a general hospital located in the Village of Waterloo, County of Seneca and State of New York. After these amendments, the corporation will be organized and operated as a Not-For-Profit Foundation to support a regional health system for the residents of the communities centered in Geneva, New York and Waterloo, New York and in the surrounding counties. Paragraph Second is hereby amended to read as follows:

"The purposes for which the Corporation is formed are:

a. To raise funds for the acquisition, erection, establishment, equipment, organization, management, and maintenance of a regional health system for the residents of the communities centered in Geneva, New York and Waterloo, New York, and in the surrounding counties;

b. To solicit, receive and make distribution of contributions, gifts, grants, bequests, and endowments for the foregoing purposes, primarily for the benefit of Geneva Regional Health System, Inc., and any not-for-profit corporations affiliated with or controlled by Geneva Regional Health System, Inc., including hospitals and residential health care facilities, provided that each qualifies under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and to advance their purposes and objectives;

c. To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof as permitted by the Not-For-Profit Corporation Law and the Internal Revenue Code of 1986, as amended;

d. The Corporation is organized exclusively for charitable, educational and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law);

e. Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any activities not permitted to be carried on (1) by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1986, or (2) by a corporation contributions to which are deductible under Section 170 (c) (2), 2055 or 2522 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law);

f. Nothing contained in this Certificate shall authorize the Corporation to

establish or operate a hospital or to provide hospital service or health-related service, a drug maintenance program, a certified home health agency, a hospice, a health-maintenance organization, or a comprehensive health services plan, as defined and covered by Articles 28, 36, 40 and 44, of the Public Health Law or, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Sections 404(b) through 404(n), Sections 404(p) through (s), and Sections 404(u) and (v), of the Not-For-Profit Corporation Law;

g. No part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefits of its members, directors or officers or any private person, except to the extent permitted under both the Not-For-Profit Corporation Law and the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law)

h. Upon dissolution of the corporation, and after payment of all just debts and liabilities, all remaining assets of the Corporation shall be distributed by the Board of Directors, among Geneva Regional Health System, Inc., Geneva General Hospital, Geneva General Hospital Nursing Home Company, Inc., Huntington Nursing Home, Inc., and/or such other not-for-profit corporations as are affiliated with or controlled by them, provided that they then qualify under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of such corporations and their affiliates shall so qualify at the time of dissolution, or, if none of said organizations are then in existence, or, if none of said organizations are willing and able to accept said assets, then the Board of Directors shall distribute such assets to such other organization(s) that are organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as exempt organization(s) under Section 501 (c) (3) of the Internal Revenue code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. Any

assets not so disposed of shall be distributed by an order of a Justice of the Supreme Court of the State of New York, exclusively for such purposes or to such organizations as said court shall determine. The disposition of assets shall be subject to any designation or restrictions originally placed on the assets, if acquired by grant, bequest or donation, unless such designations or restrictions shall be released by order of a court having jurisdiction thereof.

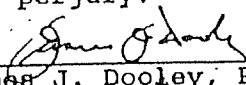
1. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Internal Revenue Code of 1986), and the Corporation shall not participate in, or intervene in (including publishing or distributing statements) any political campaign on behalf of or in opposition to any candidate for public office.

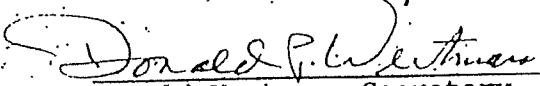
5. The above amendments to the Certificate of Incorporation were authorized by vote of a majority of all members entitled to vote thereon at a meeting of the members.

6. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

Hinman, Howard & Kattell
Attention: Richard H. Pille, Esq.
700 Security Mutual Building
80 Exchange Street
Binghamton, New York 13901-3490

IN WITNESS WHEREOF, we have signed this Certificate this 23rd day of March, 1992, and affirm that the statements made herein are true under the penalties of perjury.


James J. Dooley, President

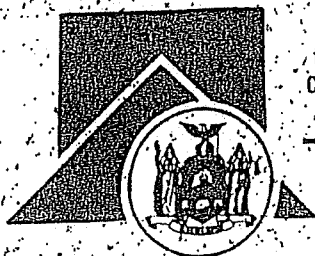

Donald Wertman, Secretary

I, Daniel A. DePasquale, a Justice of the Supreme Court of the State of New York, Seventh Judicial District, do hereby approve the foregoing Certificate of Amendment of Certificate of Incorporation of Waterloo Memorial Hospital and consent that the same be filed.

Dated: JUNE 25, 1992

Waterloo, New York

Daniel A. DePasquale
Hon. Daniel A. DePasquale
Justice of the Supreme Court of
the Seventh Judicial District of
the State of New York



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

PUBLIC HEALTH COUNCIL

June 1, 1992

Mr. Richard H. Pille
Hinman, Howard & Kattell
Attorneys at Law
700 Security Mutual Building
80 Exchange Street
Binghamton, New York 13901-3490

Re: Certificate of Amendment of the Certificate of Incorporation of
Waterloo Memorial Hospital

Dear Mr. Pille:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 29th day of May, 1992, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Waterloo Memorial Hospital hereafter to be known as Geneva Regional Health Foundation, Inc. dated March 23, 1992 is approved.

Sincerely,

Karen S. Westervelt
Executive Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 29th day of May, 1992, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of Waterloo Memorial Hospital, hereafter to be known as Geneva Regional Health Foundation, Inc., dated March 23, 1992.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. MCSPARRON
DEPUTY FIRST ASSISTANT
ATTORNEY GENERAL

(518) 474-5303

June 22, 1992

Richard H. Pille, Esq.
Hinman, Howard & Kattell
700 Security Mutual Building
80 Exchange Street
Binghamton, New York 13901-3490

Dear Mr. Pille:

RE: OLD: WATERLOO MEMORIAL HOSPITAL
NEW: GENEVA REGIONAL HEALTH FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment to the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application. Approval is contingent upon your seeking the approval of the Public Health Council.

Very truly yours,

ROBERT ABRAMS
Attorney General

By: 

RICHARD S. REDLO
Assistant Attorney General

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92068000251

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUN 30 1932
TAXES
BY: NYC
Scm

25 JUN 1932

Scm

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
WATERLOO MEMORIAL HOSPITAL

RECEIVED

HINMAN, HOWARD & KATTELL
700 SECURITY MUTUAL BUILDING
80 EXCHANGE STREET
BINGHAMTON, NEW YORK 13901-3490

FILED BY:
SERVICO
ALBANY, NEW YORK

FILED BY:
SERVICO
ALBANY, NEW YORK

1-9206800022

State of New York }
Department of State } ss:

065022

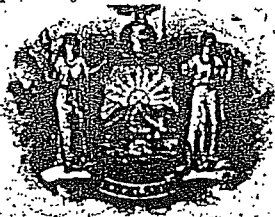
I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

OCT 1 - 1992

Witness my hand and seal of the Department of State on

A handwritten signature in cursive script, appearing to read "Gil S. Soffer".

Secretary of State



State of New York
State Board of Charities
The Capitol at Albany

*In the Matter of the Incorporation
of*

Waterloo Memorial Hospital

*Whereas Application has been made to the State
Board of Charities for its approval of the incorporation of*
and

Waterloo Memorial Hospital

*Whereas On due inquiry and investigation it appears
to said Board desirable and proper that such hospital
shall be so incorporated*

*Now Therefore In pursuance of and in conformity
with the provisions of Chapter forty of the Laws of the
State of New York enacted February 17, 1909, the said
State Board of Charities hereby certifies that it approves of
the incorporation of the said Waterloo Memorial Hospital,*

the certificate of incorporation of which is herunto annexed.

*In Witness Whereof the said Board has
this thirteenth day of April 19 20
caused these presents to be subscribed by its
President and attested by its Secretary and
its official seal to be herunto affixed.*

William R. Stewart
PRESIDENT

ATTEST

Charles H. Johnson

SECRETARY

CERTIFICATE OF INCORPORATION OF THE WATERLOO MEMORIAL HOSPITAL.

We, the undersigned, all being persons of full age, and at least two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, desiring to erect a memorial to the soldiers, sailors and marines in the World's War, and desiring to form a membership corporation, pursuant to the provisions of the Membership Corporations Law of the State of New York, do hereby make sign, acknowledge and file this certificate for that purpose, as follows:

First. The name of the proposed corporation is the "Waterloo Memorial Hospital".

Second. The purposes for which said corporation is to be formed are to erect, establish and maintain a general hospital for the treatment and care of sick or injured people.

Third. Its principal office is to be located in the Village of Waterloo, County of Seneca and State of New York.

Fourth. The number of its directors shall be seven.

Fifth. The names and places of residence of the persons to be its directors until its first annual meeting are as follows:

William W. Carleton, Waterloo, Seneca County, New York.

Charles A. Gammug, Waterloo, Seneca County, New York.

James H. Clary, Waterloo, Seneca County, New York.

George E. Zartman, Waterloo, Seneca County, N. Y.

Bart Cronin, Waterloo, Seneca County, New York.

W. Clinton Kime, Waterloo, Seneca County, New York.

Elias Vair, Waterloo, Seneca County, New York.

Sixth. The annual meetings of said corporation shall be held on the second Tuesday in May of each year, beginning with May, 1920.

Seventh. The duration of said corporation shall be perpetual.

In witness whereof, we have made, signed, acknowledged and filed this certificate in duplicate.

Dated, March 23, 1920.

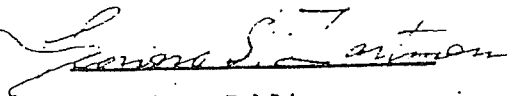
William W. Carleton
Charles A. Gammug
James H. Clary

W. Clinton Kime
George E. Zartman
Bart Cronin

State of New York,

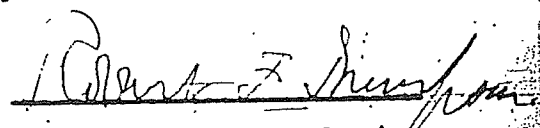
County of Seneca, ss.

On this 26th day of March, 1920, before me, the subscriber personally appeared William W. Carleton, Charles A. Genung, James H. Clary, George E. Zartman, Bart Cronin, W. Clinton Kime and Elias Vair, to me known to be the same persons described in and who executed the foregoing certificate and severally duly acknowledged to me that they executed the same.


Notary Public.

The foregoing Certificate of Incorporation is hereby approved.

Dated Apr 7 1920.


Justice of the Supreme Court.

STATE OF NEW YORK

Waterloo Memorial Hospital.

4634

STATE OF NEW YORK
OFFICE OF SECRETARY OF STATE

Filed and
Recorded APR 23 1920

James C. Murphy
SECRETARY OF STATE

Gen. S. J. J. J. J.

Waterloo

STATE OF NEW YORK.

STATE BOARD OF CHARITIES.

-- THE CAPITOL AT ALBANY.

#####

In the Matter

-of-

the Incorporation of WATERLOO MEMORIAL HOSPITAL.

#####

WHEREAS, Application has been made to the State Board of Charities for its approval of the Incorporation of Waterloo Memorial Hospital, and

WHEREAS, On due inquiry and investigation it appears to said Board desirable and proper that such Hospital shall be incorporated. NOW, THEREFORE, In pursuance of and in conformity with the provisions of Chapter forty of the Laws of the State of New York enacted February 17, 1909, the said State Board of Charities hereby CERTIFIES that it approves of the incorporation of the said Waterloo Memorial Hospital, the certificate of Incorporation of which is hereunto annexed.

IN WITNESS WHEREOF, The said Board has this thirteenth day of April, 1920, caused these presents to be subscribed by its President and attested by its Secretary and its official seal to be hereunto affixed.

(Seal)

William R. Stewart, President.

Attest:

Charles H. Johnson, Secretary.

CERTIFICATE OF INCORPORATION OF THE WATERLOO MEMORIAL HOSPITAL.

WE, the undersigned, all being persons of full age, and at least two-thirds being citizens of the United States and at least one of us a resident of the State of New York, desiring to erect a memorial to the soldiers, sailors and marines in the World's War, and desiring to form a membership corporation, pursuant to the provisions of the Membership Corporations Law of the State of New York, do hereby make, sign, acknowledge and file this certificate for that purpose, as follows:-

First: The name of the proposed corporation is the "Waterloo Memorial Hospital."

Second: The purposes for which said corporation is to formed are to erect, estab

Dated April 17, 1920.

Robert F. Thompson, Justice of the Supreme Court.

Filed & Recorded April 22nd, 1920, at 3:00 o'clock P.M.

Book 1 Pg. 193

202

lish and maintain a general hospital for the treatment and care of sick or injured people.
Third: Its principal office is to be located in the Village of Waterloo, County of Seneca and State of New York.

Fourth: The number of its directors shall be seven.

Fifth:--The names and places of residence of the persons to be its directors until its first annual meeting are as follows:

William W. Carleton

Charles A. Genung,

James H. Clary,

George E. Zartman

Bart Cronin,

W. Clinton Kime

Elias Vair,

Waterloo, Seneca County, New York

Waterloo, Seneca County, New York

Waterloo, Seneca County, New York.

Waterloo, Seneca County, New York.

Waterloo, Seneca County, New York

Waterloo, Seneca County, New York.

Waterloo, Seneca County, New York.

Sixth: The annual meetings of said corporation shall be held on the second Tuesday in May of each year, beginning with May, 1920.

Seventh: The duration of said corporation shall be perpetual.

IN WITNESS WHEREOF, We have made, signed, acknowledged and filed this certificate in duplicate.

Dated March 25, 1920.

William W. Carleton.

Charles A. Genung.

James H. Clary.

W. Clinton Kime.

George E. Zartman.

Bart Cronin.

Elias Vair.

State of New York, County of Seneca, ss: On this 26th day of March, 1920, before me, the subscriber, personally appeared William W. Carleton, Charles A. Genung, James H. Clary, George E. Zartman, Bart Cronin, W. Clinton Kime and Elias Vair, to me known to be the same persons described in and who executed the foregoing certificate and severally duly acknowledged to me that they executed the same.

(Seal)

Leonard S. Zartman, Notary Public.

The foregoing Certificate of Incorporation is hereby approved.

Dated April 17, 1920.

Robert F. Thompson, Justice of the Supreme Court.

Filed & Recorded April 21st, 1920, at 3:00 o'clock P.M.

George O. Russell
Recorder

Exhibit A

**RESOLUTIONS
OF THE
BOARD OF DIRECTORS OF
FINGER LAKES HEALTH FOUNDATION, INC.**

WHEREAS, a draft Master Alignment Agreement ("Master Alignment Agreement"), by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), Finger Lakes Health College of Nursing & Health Sciences ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF"), has been proposed to the Board of Directors (the "Board") of Finger Lakes Health Foundation, Inc. (also referred to herein as the "Corporation"); and

WHEREAS, each of GGH and SSMH have previously entered into a Management Services Agreement with URMC, dated as of October, 1, 2020, and approved by the NYS Department of Health on October 19, 2020, and Board wishes to further integrate and strengthen their clinical service offerings through a formal alignment ("Alignment"); and

WHEREAS, URMC and the Board believe that the Alignment will enable URMC to establish new clinical programs to offer additional specialty services at GGH and to provide operational assistance and cost savings to GGH, SSMH and other clinical affiliates of FLH; and

WHEREAS, the Board seeks to improve the efficiency of the Corporation's and other clinical affiliates of FLH's services, reduce their costs, increase their access to capital and achieve certain other goals and objectives set forth in the Agreement;

WHEREAS, the members of the Board of Directors, acting on behalf of the Corporation, find it in the best interests of the Corporation to adopt the following resolutions.

RESOLVED, that the Corporation shall enter into a Master Alignment Agreement (the "Master Alignment Agreement"), as described to the Board today, providing for the affiliation of the Corporation and each FLH affiliate with the University of Rochester ("UR") and the

University of Rochester Medical Center ("URMC"), pursuant to which UR shall become the sole member of FLH; FLH shall remain the sole member of GGH, SSMH, LCG-N, LCG-S, HLC, TB-HDFC, GG-HDFC and FLHF; SSMH shall remain the sole shareholder of SVI; a physician designated by GGH shall remain the sole shareholder of FLM; and GGH shall remain the sole member of FLHCN; and be it further

RESOLVED, as sole member of FLH, UR shall have all the rights and authority of members under the New York Not-for-Profit Corporation Law and common law except as specifically limited by the Master Alignment Agreement, and certain powers shall be reserved to UR and FLH, as set forth in the Master Alignment Agreement; and

RESOLVED, that, pursuant to the Master Alignment Agreement, each FLH affiliate with a board who are not the same individuals as the FLH Board such as the Corporation (the "Non-Mirror Board Entities") shall cause to be appointed one (1) voting member to be appointed by the URMC CEO; and

RESOLVED, that certain Board actions will require the approval of the URMC Class of Directors, certain actions will be reserved to FLH with respect to the Non-Mirror Board Entities, as described in the Master Alignment Agreement, and UR, as the sole member of FLH, shall have certain reserved powers with respect to FLH and FLH's Affiliates; and

RESOLVED, that the Certificate of Incorporation and Bylaws of the Corporation be amended to reflect all of the foregoing changes, as described in the Master Alignment Agreement; and

RESOLVED, that, the closing of the transactions contemplated by the Master Alignment Agreement are subject to satisfactory due diligence review by the parties thereto, and certain other conditions; and

RESOLVED, that, subject to receipt of all necessary regulatory approvals, the Assistant Secretary or other appropriate officers of the Corporation be, and hereby are, authorized, empowered and directed, without any further action of this Board, in the name and on behalf of the Corporation, to negotiate and approve, execute and deliver, and/or acknowledge and consent to, as the case may be, a Master Alignment Agreement to be entered into by and between the parties set forth in the first paragraph hereof, containing terms and conditions presented to the meeting, with such change or changes therein, or amendments thereto, as the officer executing the same on behalf of the Corporation shall, upon consultation with counsel, approve, the execution thereof with such change or changes to be conclusive evidence of the authority therefore; and be it further

RESOLVED, that the Assistant Secretary or other appropriate officers of the Corporation be, and hereby are, authorized, empowered and directed, in the name and on behalf of the Corporation, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery

of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer or Director of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of September 21, 2021

Exhibit B
RESOLUTIONS
OF THE
BOARD OF DIRECTORS OF
FINGER LAKES HEALTH FOUNDATION, INC.

WHEREAS, Finger Lakes Health Foundation, Inc. (the "Corporation") entered into the Master Alignment Agreement ("Master Alignment Agreement"), dated April 14, 2022, by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF"), pursuant to which the parties thereto have agreed to create a single, multiple corporation system (the "Alignment"); and

WHEREAS, per the Master Alignment Agreement, to effect the Alignment, the Corporation shall adopt amended and restated bylaws as well as an amended and restated certificate of incorporation, which, among other things, make changes to the governance and structure of the Corporation as are specifically described in the Master Alignment Agreement;

WHEREAS, FLH and URMC have agreed that the closing of the transactions contemplated by the Master Alignment Agreement (the "Closing") shall occur, and the Alignment shall be effective, on August 1, 2023; and

WHEREAS, FLH is the sole member of the Corporation, and as such has the power to approve amendments of the Corporation's certificate of incorporation and bylaws; and

WHEREAS, the Corporation's management and legal counsel have presented amended and restated bylaws as required to effect the Alignment, as well as other changes that are recommended as necessary or appropriate, forms of which have been presented to the Board today and are attached as Exhibit A hereto; and

WHEREAS, the Corporation's management and legal counsel have presented an amended and restated certificate of incorporation for purposes of the Alignment, a form of which have been presented to the Board today and are attached as Exhibit B hereto; and it is hereby

RESOLVED, that, to effectuate the transactions contemplated by the Master Alignment Agreement, and to make other changes as have been recommended by management as necessary or appropriate, the Board of Directors of the Corporation, hereby approves the adoption of the amended and restated bylaws set forth in Exhibit A hereto, subject to corrections consistent with alignment and/or typographical issues as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, and recommends them to FLH as the sole corporate member of the Corporation for approval, to become effective on August 1, 2023; and be it further

RESOLVED, that, the Board of Directors hereby approves the adoption of the amended and restated certificate of incorporation set forth in Exhibit B hereto, subject to such changes as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, including as may be requested by any third party with the authority to approve amendments to the Corporation's certificate of incorporation, including but not limited to state or federal regulators; authorizes the President of the Corporation to execute the restated certificate of incorporation and to file it promptly upon receipt of any required third party approvals; and recommends it to FLH as the sole corporate member of the Corporation for approval; and be it further

RESOLVED, that, if the Closing does not occur for any reason, the changes to the certificate of incorporation and bylaws described in the foregoing resolutions shall be deemed to not have been adopted, and shall be of no force and effect; and be it further

RESOLVED, that Jose Acevedo, MD, be, and hereby is, removed as Assistant Secretary of the Corporation, effective July 24, 2023; and be it further

RESOLVED, that, the Board of Directors hereby approves the appointment of Jose Acevedo, MD, to serve as President & CEO of the Corporation and recommends it to FLH as the sole corporate member of the Corporation for approval, effective July 24, 2023; and be it further

RESOLVED, that the President & CEO of the Corporation be, and hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of: July 24, 2023

Exhibit H

**RESOLUTIONS
OF THE
BOARD OF DIRECTORS OF
FINGER LAKES REGIONAL HEALTH SYSTEM, INC.
AS THE SOLE MEMBER OF
FINGER LAKES HEALTH FOUNDATION, INC. ("THE CORPORATION")**

WHEREAS, Finger Lakes Regional Health System, Inc. dba Finger Lakes Health ("FLH") entered into the Master Alignment Agreement ("Master Alignment Agreement"), dated April 14, 2022, by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVT"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF"), pursuant to which the parties thereto have agreed to create a single, multiple corporation system (the "Alignment"); and

WHEREAS, per the Master Alignment Agreement, to effect the Alignment, the Corporation shall adopt amended and restated bylaws as well as an amended and restated certificate of incorporation, which, among other things, make changes to the governance and structure of the Corporation as are specifically described in the Master Alignment Agreement; and

WHEREAS, FLH and URMC have agreed that the closing of the transactions contemplated by the Master Alignment Agreement (the "Closing") shall occur, and the Alignment shall be effective on August 1, 2023; and

WHEREAS, FLH is the sole member of the Corporation, and as such has the power to approve amendments of the Corporation's certificate of incorporation and bylaws; and

WHEREAS, the Board of Directors of the Corporation has approved the amended and restated bylaws, of the Corporation incorporating changes as required to effect the Alignment, as well as other changes that the Board has determined to be necessary or appropriate, forms of which have been presented to the Board of FLH today and are

attached as Exhibit A, and recommended them to FLH for approval in its capacity as the sole member of the Corporation; and

WHEREAS, the Board of Directors of the Corporation has approved the amended and restated certificate of incorporation of the Corporation reflecting changes for the Alignment, the form of which has been presented to the Board of FLH today and is attached as Exhibit B, and recommended it to FLH for approval in its capacity as the sole member of the Corporation;

WHEREAS, the Board of Directors of the Corporation has approved the appointment of Jose Acevedo, MD, as President of the Corporation, effective July 24, 2023, and recommended his appointment to FLH for approval in its capacity as the sole member of the Corporation; it is hereby

RESOLVED, that, to effectuate the transactions contemplated by the Master Alignment Agreement, and to make other changes as have been determined to be necessary or appropriate by the Corporation's Board of Directors, the Board of Directors of FLH, acting as the sole member of the Corporation, hereby approves the adoption of the amended and restated bylaws set forth in Exhibit A hereto, subject to corrections consistent with alignment and/or typographical issues as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, to become effective on August 1, 2023; and be it further

RESOLVED, that, the Board of Directors of FLH, acting as the sole member of the Corporation, hereby approves the adoption of the amended and restated certificate of incorporation set forth in Exhibit B hereto, subject to such changes as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, including as may be requested by any third party with the authority to approve amendments to the Corporation's certificate of incorporation, including but not limited to state or federal regulators; authorizes the President of the Corporation to execute the restated certificate of incorporation and to file it promptly upon receipt of any required third party approvals; and be it further

RESOLVED, that, if the Closing does not occur for any reason, the changes to the certificate of incorporation and bylaws of the Corporation described in the foregoing resolution shall be deemed to not have been adopted or approved, and shall be of no force and effect; and be it further

RESOLVED, that the appointment of Jose Acevedo, MD, as President of the Corporation be, and hereby is, authorized and approved, effective July 24, 2023; and be it further

RESOLVED, that the President & CEO of the Corporation is hereby authorized, empowered and directed, in the name and on behalf of the FLH, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of: July 26, 2023

[EXHIBITS OMITTED FROM CERTIFICATE]

FINGER LAKES HEALTH FOUNDATION, INC.

SECRETARY'S CERTIFICATE

August 1, 2023

This Certificate (this "Certificate") is furnished to University of Rochester ("UR") and University of Rochester Medical Center ("URMC"), pursuant to Section 12.3.2 of that certain Master Alignment Agreement, dated as of April 14, 2022 among UR and URMC, and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"), Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva – North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva – South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), dba Finger Lakes Health College of Nursing and Health Sciences, and the Finger Lakes Health Foundation, Inc. ("FLHF") (as amended from time to time, the "Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

The undersigned, being the duly elected or appointed and qualified Secretary of FLHF, does hereby certify, on behalf of FLHF, and not in their individual capacity, as follows:

1. Attached hereto as Exhibits A and B are true, correct and complete copies of resolutions (the "Resolutions") duly adopted by the Board of Directors of FLHF, duly authorizing the making, execution and delivery of the Agreement, and the consummation of the transactions contemplated thereby including but not limited to the adoption of the Restated Certificate of Incorporation as well as the Amended and Restated Bylaws, effective upon Closing. Such resolutions are in full force and effect on the date hereof and have not been altered, amended, modified or rescinded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written above.

A handwritten signature in cursive script, appearing to read "Cathy Sperry", written over a horizontal line.

Name: Cathy Sperry

Title: Secretary

(Signature Page to Secretary's Certificate (FLHF))

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 18th day of June 2025, approves the filing of the Restated Certificate of Incorporation of Finger Lakes Health Foundation, Inc., dated July 31, 2023.

MEMORANDUM

TO: Michael Stelluti
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel

DATE: May 28, 2025

SUBJECT: Proposed Amended and Restated Certificate of
Incorporation of Geneva General Hospital

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

The attachments relating to this matter include the following:

1. A memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
2. A letter dated August 1, 2023, from Kimberly Redmond on behalf of Geneva General Hospital, to the Department of Health requesting approval of the proposed Amended and Restated Certificate of Incorporation of Geneva General Hospital;
3. The Proposed Amended and Restated Certificate of Incorporation Geneva General Hospital dated July 31, 2023;
4. The current Amended and Restated Certificate of Incorporation of Geneva General Hospital and all amendments dating from 1924 to the present with corresponding approvals;
5. The Amended and Restated Bylaws of Geneva General Hospital;
6. Certified copies of the Resolutions of the Board of Directors of Geneva General Hospital authorizing the proposed amendments to the Geneva General Hospital's Certificate of Incorporation and other corporate transactions;
7. Certified copies of the Resolutions of the Board of Directors of Finger Lakes Regional Health System Inc. approving the proposed amendments to Geneva General Hospital's Certificate of Incorporation and other corporate transactions.

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: May 28, 2025

Subject: Proposed Amended and Restated Certificate of Incorporation of Geneva General Hospital

Geneva General Hospital ("GGH") requests Public Health and Health Planning Council ("PHHPC") approval of a proposed Amended and Restated Certificate of Incorporation.

GGH is a non-profit corporation formed on March 25, 1892 under the name Medical and Surgical Hospital of Geneva, N.Y., for purposes of operating a hospital. The entity changed its name to Geneva General Hospital in 1924 by filing a Certificate of Change of Name with the Secretary of State. In 1977, the Public Health Council ("PHC") approved amendments to the entity's corporate purpose which expanded its purpose to include the provision of "hospital facilities and services for the care and treatment of persons who are acutely ill." In 1989, the PHC issued a letter stating that its consent was not required in connection with an amendment to the entity's purpose to add operation of a day care center. Amendments in 2003, 2006 and 2007 were likewise determined not to require PHC approval. GGH current operates a hospital in the Finger Lakes (Cert# 3402000H). GGH now seeks to amend its Certificate of Incorporation in connection with a transaction wherein the University of Rochester became the sole member of GGH's parent corporation, Finger Lakes Regional Health System, Inc., doing business as Finger Lakes Health.

Presently, GGH wishes to make various ministerial changes to its Certificate of Incorporation including deleting language from its purpose which was previously required by the Secretary of Housing and Urban Development and deleting other provisions which are no longer applicable under its current operating structure. The proposed July 31, 2023 Amended and Restated Certificate of Incorporation of GGH was authorized by a Resolution of the Board of Directors of Finger Lakes Regional Health System, Inc., the entity's sole parent, and by a Resolution of the Board of Directors of GGH.

Pursuant to NYS Not-For-Profit Law § 804(a)(i), PHHPC must consent to the requested changes prior to the filing of the Amended and Restated Certificate of Incorporation.

There is no legal objection to the proposed Amended and Restated Certificate of Incorporation of Geneva General Hospital, and it is in legally acceptable form.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

350 BEDFORD STREET • STAMFORD, CONNECTICUT 06901
TEL (203) 316-0483 • FAX (203) 399-0505
www.garfunkelwild.com

FILE NO.: 12819.0004

August 1, 2023

Ms. Colleen Frost
Executive Secretary, Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Via FEDERAL EXPRESS: 203-399-0514

Re: Request for Consent to Amend and Restate the Certificate of Incorporation of Geneva General Hospital (the "Corporation").

To Whom It May Concern:

I enclose a copy of the proposed Amended and Restated Certificate of Incorporation of the Corporation. We request Public Health and Health Planning Council and Department of Health approval of this proposed Amended and Restated Certificate of Incorporation or a letter from the Department of Health stating that no formal approval of the Department of Health or the Public Health and Planning Council is required. This document is being filed in connection with the closing of a transaction whereby the University of Rochester is being added as the new sole member of the Corporation's sole member, Finger Lakes Regional Health System, Inc., dba Finger Lakes Health. The certificate will be amended and restated as follows:

- (a) The preamble of the Certificate of Incorporation is hereby deleted in its entirety.
- (b) The Paragraph First relating to the name of the Corporation is amended to read in its entirety as set forth in paragraph FIRST of the Restated Certificate of Incorporation.
- (c) A new paragraph SECOND relating to the Corporation being a corporation as defined under the N-PCL is added.
- (d) The last paragraph of Paragraph Second (a) regarding dissolution of the Corporation is amended in its entirety to read as set forth in paragraph TENTH of the Restated Certificate of Incorporation.

- (e) Paragraph Second (b) relating to relating to the Board of Trustees is omitted in its entirety.
- (f) The sixth paragraph of Paragraph Second (a), Paragraph Second (c), and Paragraph Second (d) relating to language required by the Secretary of Housing and Urban Development are deleted in their entirety.
- (g) The remaining language in Paragraph Second relating to the purposes of the Corporation is renumbered as paragraph FOURTH of the Restated Certificate of Incorporation.
- (h) Paragraph Third relating to the initial board of managers of the Corporation is hereby omitted in its entirety.
- (i) A new paragraph designating the sole member of the Corporation is hereby added to read as set forth in paragraph THIRD of the Restated Certificate of Incorporation.
- (j) A new paragraph specifying certain powers reserved to the sole member of the Corporation is hereby added to read as set forth in paragraph FIFTH of the Restated Certificate of Incorporation.
- (k) Paragraph Fourth relating to the duration of the Corporation is renumbered as paragraph SIXTH of the Restated Certificate of Incorporation.
- (l) Paragraph Fifth relating the location of the facility operated by the Corporation is hereby amended in its entirety to read as set forth in paragraph SEVENTH of the Restated Certificate of Incorporation.
- (m) A new paragraph relating to the type of corporation is hereby added to read as set forth in paragraph NINTH of the Restated Certificate of Incorporation.
- (n) A new paragraph relating to language relating to the Corporation's Federal tax-exempt status is hereby added to read as set forth in paragraph TENTH of the Restated Certificate of Incorporation.
- (o) A new paragraph relating to the Corporation's service of process address is hereby added to read as set forth in paragraph ELEVENTH of the Restated Certificate of Incorporation.

This amendment is being filed subsequent to the consent of the Sole Member to make the changes stated above and to restate the Corporation's Certificate of Incorporation.

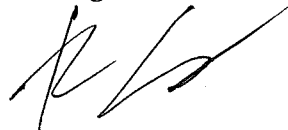
GARFUNKEL WILD, P.C.

August 1, 2023
Page 3

Also enclosed to aid you in your review are copies of the filed Certificate of Incorporation and all subsequent amendments to the Certificate of Incorporation of the Corporation. Also enclosed is an affidavit of the President and CEO of the Corporation, attesting that the Certificate of Incorporation documents provided herein are true, correct and complete.

Please contact me at (203) 399-0514 or via e-mail at kredmond@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to be 'KR', with a long horizontal stroke extending to the right.

Kimberly Redmond
Paralegal

Cc: Barbara D. Knothe, Esq.
Diane Caselli, Esq.

GARFUNKEL WILD, P.C.

Affidavit

STATE OF NEW YORK

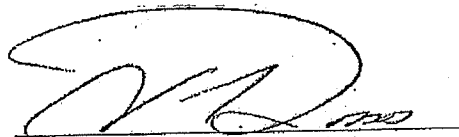
COUNTY OF Ontario

)
)
)

The undersigned, Jose Acevedo, M.D., President and CEO, being duly sworn, deposes and says:

1. I am the duly elected President and CEO of Geneva General Hospital (the "Corporation"). The Corporation is a New York not-for-profit corporation located in Ontario County.
2. The documents enclosed herein, all of which comprise the Restated Certificate of Incorporation and the Certificate of Incorporation, have been examined by me and to the best of my knowledge and belief, the contents thereof are true, correct and complete. There have been no amendments or changes from the original certificate of incorporation.

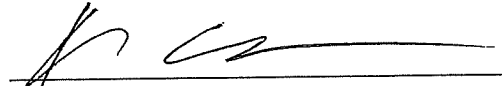
Dated: July 31, 2023



Name: Jose Acevedo, MD
Title: President and CEO

Sworn to before me this

31st day of July, 2023



Notary Public

Amended and Restated Certificate of Incorporation

**RESTATED
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL**

Under Section 805 of the Not-For-Profit Corporation Law

The undersigned, being the President and CEO of Geneva General Hospital, for the purpose of amending and restating the Certificate of Incorporation of the Corporation pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York (the "N-PCL"), hereby certifies:

1. The name of the corporation is Geneva General Hospital.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on March 25, 1892, pursuant to Chapter 95 of the Laws of 1889 entitled "An act to authorize the formation of corporations for the establishment and maintenance of hospital infirmaries and home for invalids or aged or indigent persons." The name under which the Corporation was formed was the Medical and Surgical Hospital of Geneva, N.Y.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL.
4. This amendment and restatement of the Certificate of Incorporation was duly authorized by the Member of the Corporation.
5. The Certificate of Incorporation is hereby amended to effect the following:
 - (a) The preamble of the Certificate of Incorporation is hereby deleted in its entirety.
 - (b) The Paragraph First relating to the name of the Corporation is amended to read in its entirety as set forth in paragraph FIRST of the Restated Certificate of Incorporation below.
 - (c) A new paragraph SECOND relating to the Corporation being a corporation as defined under the N-PCL is added to read as set forth in paragraph SECOND of the Restated Certificate of Incorporation below.
 - (d) The last paragraph of Paragraph Second (a) regarding dissolution of the Corporation is amended in its entirety to read as set forth in paragraph TENTH of the Restated Certificate of Incorporation below.
 - (e) Paragraph Second (b) relating to relating to the Board of Trustees is omitted in its entirety.

- (f) The sixth paragraph of Paragraph Second (a), Paragraph Second (c), and Paragraph Second (d) relating to language required by the Secretary of Housing and Urban Development are deleted in their entirety.
- (g) The remaining language in Paragraph Second relating to the purposes of the Corporation is renumbered as paragraph FOURTH of the Restated Certificate of Incorporation below.
- (h) Paragraph Third relating to the initial board of managers of the Corporation is hereby omitted in its entirety.
- (i) A new paragraph designating the sole member of the Corporation is hereby added to read as set forth in paragraph THIRD of the Restated Certificate of Incorporation below.
- (j) A new paragraph specifying certain powers reserved to the sole member of the Corporation is hereby added to read as set forth in paragraph FIFTH of the Restated Certificate of Incorporation below.
- (k) Paragraph Fourth relating to the duration of the Corporation is renumbered as paragraph SIXTH of the Restated Certificate of Incorporation below.
- (l) Paragraph Fifth relating the location of the facility operated by the Corporation is hereby amended in its entirety to read as set forth in paragraph SEVENTH of the Restated Certificate of Incorporation below.
- (m) A new paragraph relating to the type of corporation is hereby added to read as set forth in paragraph NINTH of the Restated Certificate of Incorporation below.
- (n) A new paragraph relating to language relating to the Corporation's Federal tax-exempt status is hereby added to read as set forth in paragraph TENTH of the Restated Certificate of Incorporation below.
- (o) A new paragraph relating to the Corporation's service of process address is hereby added to read as set forth in paragraph ELEVENTH of the Restated Certificate of Incorporation below.

6. The Certificate of Incorporation is restated as amended herein to read in its entirety as follows:

**RESTATED CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL**

FIRST: The name of the corporation is Geneva General Hospital.

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

THIRD: The sole member of the Corporation shall be Finger Lakes Regional Health System, Inc. (the "Member"), a New York not-for-profit corporation.

FOURTH: The objects for which said Corporation is formed are to erect, establish, maintain and operate a general hospital, infirmary, or home for the reception care, maintenance, giving of medical and surgical advice, aid and treatment to persons afflicted with maladies or physical injuries, or physical weaknesses or deformities or infirmities, and free dispensary;

To provide on a nonprofit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended; and

The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to, nor inure to the benefit of, any individual; and

Whether or not previously covered by the powers granted to the Corporation in the Charter or under applicable law, the Corporation is empowered:

To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes of the Corporation; and

To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

The Corporation shall, with the prior written approval of the New York State Department of Social Services, establish and operate a day care center in the County of Ontario, State of New York. No certificate of amendment, merger, consolidation or liquidation shall be filed without the prior approval of the New York State Office of Children and Family Services; and

The Corporation shall plan, make coordinating recommendations for, support and monitor the development of housing for the elderly for the community centered in Geneva, Penn Yan and Waterloo, New York, and in surrounding counties, in order to promote their general welfare by providing them with safe, sanitary, independent living facilities, particularly for those who are functionally impaired but not in need of continuous medical or nursing care. Nothing contained in this certificate of amendment to the certificate of incorporation of Geneva General Hospital shall authorize the Corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose; and

With the prior consent of the Commissioner of the New York State Education Department and pursuant to applicable regulations of the New York State Education Department, the Corporation shall operate an education program preparing students for admission to the licensure examination for licensed practical nursing.

FIFTH: In addition to all other rights and powers of membership prescribed by New York Law, this Certificate of Incorporation, and/or the Bylaws of the Corporation, the following governance and management powers shall be reserved to the Member:

(a) approve any aspects of the strategic plan of the Corporation and its affiliates, to the extent that such plan would (i) result in a call upon the financial resources of the Member's sole corporate member, the University of Rochester (the "University") not dedicated for support of the Corporation and its affiliates, (ii) have a major impact on the University of Rochester's academic programs, or (iii) contravene any University policy established by its Board of Trustees;

(b) approve the capital and operating budgets of the Corporation and its affiliates to the extent that such budgets would (i) result in a call upon the University's financial resources not dedicated for support of the Corporation and its affiliates, (ii) have a major impact on the University's academic programs, or (iii) contravene any University policy established by its Board of Trustees;

(c) approve the incurrence of any debt proposed by the Corporation or any affiliate, including the issuance of bonds, that would (i) result in a call upon the University's financial resources not dedicated for support of the Corporation and its affiliates, (ii) have a major impact on the University's academic programs, (iii) contravene any University policy established by its Board of Trustees, or (iv) adversely affect the University's ability to issue tax exempt debt;

provided, however, that none of the Member's powers set forth herein shall be exercised so as to cause the Corporation or any affiliate to violate their respective charitable purposes or the covenants of their respective debt documents or any other written agreements existing as of August 1, 2023.

SIXTH: The term of existence and duration of said Corporation shall be perpetual.

SEVENTH: The office of the Corporation is to be located in the County of Ontario, State of New York.

EIGHTH: The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

NINTH: The following language relates to the Corporation's tax-exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in paragraph FOURTH above.

(a) Notwithstanding any other provision of this certificate, the Corporation is organized exclusively for charitable purposes; the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director, or officer of the Corporation or any private individual, other than an organization described in Section 501(c)(3) of the Code, except that reasonable compensation may be paid for services rendered to or for the Corporation. No member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

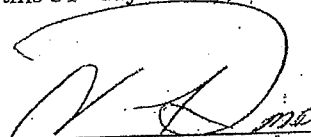
(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Code. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.

TENTH: In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation and qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, such organization or organizations to be selected by the board of directors of the Corporation. Any such assets not so disposed of shall be disposed of by a Justice of the Supreme Court of the State of New York of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

ELEVENTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon them is: Geneva General Hospital, Attn: Administrative. Dept., 196 North Street, Geneva, New York, 14456.

This amendment and restatement of the Certificate of Incorporation was duly authorized by the Member of the Corporation.

IN WITNESS WHEREOF, I have made and subscribed this certificate and hereby affirm
under the penalties of perjury that its contents are true this 31st day of July, 2023.



Name: Jose Acevedo, MD
Title: President and CEO

RESTATED CERTIFICATE OF INCORPORATION

OF

GENEVA GENERAL HOSPITAL

Under Section 805 of the New York Not-for-Profit Corporation Law

FILED BY:
BARBARA KNOTHE, ESQ.
GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NEW YORK 11021

**Certificate of Incorporation and all
subsequent Amendments to the Certificate of
Incorporation**

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: GENEVA GENERAL HOSPITAL

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES PROCESS

COUNTY: ONTA

FILED:08/13/2007 DURATION:***** CASH#:070813000316 FILM #:070813000282

FILER:

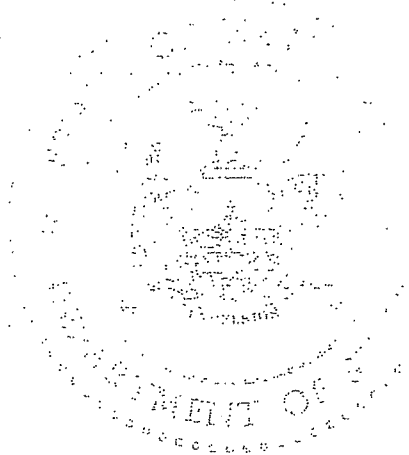
HINMAN HOWARD & KATTELL, LLP
80 EXCHANGE STREET

BINGHAMTON, NY 13902

ADDRESS FOR PROCESS:

THE CORPORATION
196-198 NORTH STREET
GENEVA, NY 14456

REGISTERED AGENT:



SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

FEES	90.00
FILING	30.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	50.00

PAYMENTS	90.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	90.00
OPAL	0.00
REFUND	0.00

050815JBA

DOS-1025 (04/2007)

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
August 14, 2007.

A handwritten signature in cursive script that reads "Paul LaPointe".

Paul LaPointe
Special Deputy Secretary of State

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CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

Under Section 803 of the Not-For-Profit Corporation Law

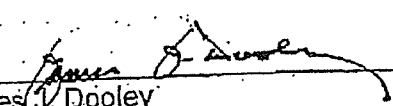
I, the undersigned, being the President and CEO of GENEVA GENERAL HOSPITAL for the purposes of amending the Certificate of Incorporation under Section 803 of the Not-For-Profit Corporation Law of the State of New York, do hereby certify:

1. The name of the corporation is GENEVA GENERAL HOSPITAL. The name under which the corporation was formed was the MEDICAL AND SURGICAL HOSPITAL OF GENEVA, N.Y.
2. The Certificate of Incorporation was filed by the Department of State of New York on March 25, 1892 pursuant to Chapter 95 of the Laws of 1889 entitled "An act to authorize the formation of corporations for the establishment and maintenance of hospital infirmaries and home for invalids or aged or indigent persons."
3. The corporation is a corporation as defined in sub-paragraph (a)(6) of Section 102 of the Not-For-Profit Corporation Law. The corporation is a Type B corporation under Section 201 of the Not-For-Profit Corporation Law with members, and after the amendment of its Certificate effected herein, the corporation shall be a Type B corporation with members.
4. A new paragraph is added to the purposes in Paragraph Second of the Certificate of Incorporation, which paragraph is as follows:

With the prior consent of the Commissioner of the New York State Education Department and pursuant to applicable regulations of the New York State Education Department the corporation shall operate an education program preparing students for admission to the licensure examination for licensed practical nursing.
5. The amendment of the Certificate of Incorporation was authorized by the vote of the members of said corporation at a meeting duly called and held on the 24th day of January, 2007.
6. The Secretary of State of New York is, hereby designated as the agent of the corporation upon whom process in any action or proceeding against the corporation may be signed; the post office address to which the Secretary of State shall mail a copy of any such process so served is:

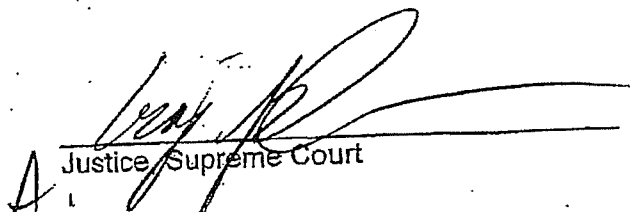
196-198 North Street
Geneva, New York 14456

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 28th
day of March, 2007.


James J. Dooley
President & CEO

The undersigned, a Justice of the Supreme Court of the State of New York for
the Seventh Judicial District, in which the office of the corporation is to be located,
hereby approves the foregoing Certificate of Amendment of the Certificate of
Incorporation of Geneva General Hospital and consents that the same be filed.

Dated: July 26, 2007


Justice, Supreme Court

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.


ASSISTANT ATTORNEY GENERAL

6.25.2007
DATE

STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
Albany, New York

CONSENT TO FILING WITH THE DEPARTMENT OF STATE
(General Use)

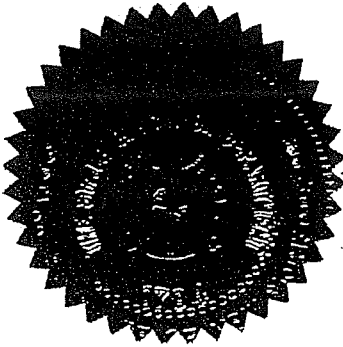
Consent is hereby given to the filing of the annexed certificate of amendment

of GENEVA GENERAL HOSPITAL

[name of entity]

pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.



IN WITNESS WHEREOF this instrument is
executed and the seal of the State Education
Department is affixed.

RICHARD P. MILLS
Commissioner of Education

By:

Howard S. Beyer
Howard S. Beyer

Commissioner's authorized designee

5/23/07
Date

**THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE
COMMISSIONER'S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE
STATE EDUCATION DEPARTMENT.**

070813000 *282*

CERTIFICATE OF AMENDMENT

OF

GENEVA GENERAL HOSPITAL

Section 803 of the Not-for-Profit Corporation Law

FILED BY:
11:09 AM
AUG 13 2007
HINMAN HOWARD & KATTELL, LLP
80 Exchange Street
Binghamton, NY 13902
Cust. Ref#050815JBA
DRAWDOWN

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED AUG 13 2007

TAXS

BY: *JCH*

OUTPREW

CSC 45

JCH

RECEIVED
2007 AUG 13 AM 9:13

316

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME: GENEVA GENERAL HOSPITAL

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES

COUNTY: ONTA

SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

=====

FILED:11/30/2006 DURATION:***** CASH#:061130000867 FILM #:061130000789

ADDRESS FOR PROCESS

REGISTERED AGENT

FILER	FEE	65.00	PAYMENTS	65.00
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	FILING	30.00	CASH	0.00
	TAX	0.00	CHECK	0.00
HINMAN HOWARD & KATTELL, LLP	CERT	0.00	CHARGE	0.00
80 EXCHANGE STREET	COPIES	10.00	DRAWDOWN	65.00
	HANDLING	25.00	OPAL	0.00
BINGHAMTON, NY 13902			REFUND	0.00

162651MPJ

=====

DOS-1025 (11/89)

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **November 30, 2006**



A handwritten signature in black ink, appearing to read "R. J. ...", is written over the printed title.

Special Deputy Secretary of State



CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

61130000789

Under Section 803 of the Not-For-Profit Corporation Law

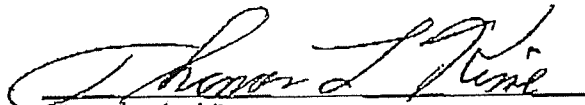
We, the undersigned, being the Chairman of the Board and the Secretary respectively of GENEVA GENERAL HOSPITAL for the purposes of amending the Certificate of Incorporation under Section 803 of the Not-for-Profit Corporation law of the State of New York, do hereby certify:

1. The name of the corporation is GENEVA GENERAL HOSPITAL. The name under which the corporation was formed was the MEDICAL AND SURGICAL HOSPITAL OF GENEVA, N.Y.
2. The Certificate of Incorporation was filed by the Department of State of New York on March 25, 1892 pursuant to Chapter 95 of the Laws of 1889 entitled "An act to authorize the formation of corporations for the establishment and maintenance of hospital infirmaries and home for invalids or aged or indigent persons."
3. The corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law with members, and after the amendment of its Certificate effected herein, the corporation shall be a Type B corporation with members.
4. A new paragraph is added to the purposes in Paragraph Second of the Certificate of Incorporation, which paragraph is as follows:

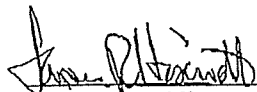
"The corporation shall plan, make coordinating recommendations for, support and monitor the development of housing for the elderly for the community centered in Geneva, Penn Yan and Waterloo, New York, and in surrounding counties, in order to promote their general welfare by providing them with safe, sanitary, independent living facilities, particularly for those who are functionally impaired but not in need of continuous medical or nursing care. Nothing contained in this certificate of amendment to the certificate of incorporation of Geneva Hospital shall authorize the corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose."
5. The amendment of the Certificate of Incorporation was authorized by the vote of the members of said corporation at a meeting duly called and held on the 24th day of May, 2006.
6. The Secretary of State of the State of New York is, hereby, designated as the agent of the corporation upon whom process in any action or proceeding against the corporation may be signed; the post office address to which the Secretary of State shall mail a copy of any such process so served is:

196-198 North Street
Geneva, New York 14456

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 24th day of May, 2006, and affirm under the penalties of perjury that its contents are true.



Thomas L. Kime
Chair of the Board



James R. Hiserodt
Assistant Secretary

The undersigned, a Justice of the Supreme Court of the State of New York for the Seventh Judicial District, in which the office of the corporation is to be located, hereby approves the foregoing Certificate of Amendment of the Certificate of Incorporation of Geneva General Hospital and consents that the same be filed.

Dated: _____

10/25/06W^m F. Koehler~~ACTING~~ Justice, Supreme Court

WILLIAM F. KOEHLER

NOV. 13. 2006 10:34AM

HH&K, LLP GEN ROCHESTER

NO. 223 P. 6 P.01/01



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

REGIONAL OFFICE DIVISION
Rochester Regional Office

ELIOT SPITZER
Attorney General

October 11, 2006

Richard H. Pille, Esq.
Hinnan, Howard & Karrell, LLP
700 Security Mutual Building
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13902-5250

FAX to (607) 723-6605


Re: Geneva General Hospital
Certificate of Amendment

Dear Mr. Pille:

The Attorney General has no objection to the filing of the proposed certificate of amendment with the Secretary of State, and will not appear at time of application.

Please provide a copy of the filing receipt so I may close the Attorney General's file on the matter.

Very truly yours,


Audrey Cooper
Assistant Attorney General

444 E. Main St., Rochester, N.Y. 14614 • (585) 540-7430 • Fax (585) 546-7514

TOTAL P.01

4

NOV. 13. 2006 10:34AM

HH&K, LLP

NO. 223 P. 5



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 28, 2006


Mr. Richard H. Pille, Esq.
Hinman, Howard & Kattell, LLP
Attorneys at Law
700 Security Mutual Building
80 Exchange Street - P.O. Box 5250
Binghamton, NY 13902-5250

Re: Proposed Certificate of Amendment of the
Certificate of Incorporation of Geneva General
Hospital

Dear Mr. Pille:

The proposed certificate of amendment to the certificate of incorporation of the above referenced corporation, dated May 24, 2006, does not require the formal approval of the Public Health Council or the Commissioner of Health, since, pursuant to Section 804(a)(i) of the Not-for-Profit Corporation Law, the certificate neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the Council's or Commissioner's approval, nor does it change the name of the corporation.

Sincerely,


Frank Barry
Attorney
Bureau of House Counsel

5

F 061130000789

CSC 45
DRAW DOWN

CERTIFICATE OF AMENDMENT

OF

GENEVA GENERAL HOSPITAL

Under Section 803 of the Not-For-Profit Corporation Law

FILED
2006 NOV 30 PM 3:09

FILED BY:
HINMAN HOWARD & KATTELL, LLP
80 Exchange Street
Binghamton, NY 13902
Cust. Ref#162651MPJ

DRAWDOWN

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

NOV 30 2006

FILED
TAXS

BY: mark
Ontario

2006 NOV 13 PM 4:26

RECEIVED

2006 OCT -5 AM 11:09

RECEIVED

GT

9

867

FILING RECEIPT

ENTITY NAME: GENEVA GENERAL HOSPITAL

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES PROCESS

COUNTY: ONTA

SERVICE COMPANY: CORPORATION SERVICE COMPANY

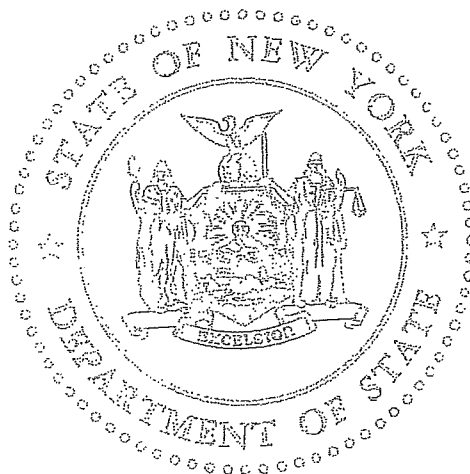
SERVICE CODE: 45

FILED:02/27/2003 DURATION:***** CASH#:030227000732 FILM #:030227000708

ADDRESS FOR PROCESS

THE CORPORATION
196-198 NORTH STREET
GENEVA, NY 14456

REGISTERED AGENT



FILER	FEES	90.00	PAYMENTS	90.00
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	FILING	30.00	CASH	0.00
HINMAN HOWARD & KATTELL, LLP	TAX	0.00	CHECK	0.00
80 EXCHANGE STREET	CERT	0.00	CHARGE	0.00
P.O. BOX 5250	COPIES	10.00	DRAWDOWN	90.00
INGHAMTON, NY 13902-5250	HANDLING	50.00	BILLED	0.00
			REFUND	0.00

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on, February 27, 2003.



A handwritten signature in black ink, appearing to be "R. A. S.", written over a horizontal line.

Secretary of State

6030227000708

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

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

We, the undersigned, being the Chairman of the Board and the Secretary respectively of GENEVA GENERAL HOSPITAL for the purposes of amending the Certificate of Incorporation under Section 803 of the Not-for-Profit Corporation Law of the State of New York, do hereby certify:

1. The name of the corporation is GENEVA GENERAL HOSPITAL. The name under which the corporation was formed was the MEDICAL and SURGICAL HOSPITAL OF GENEVA, N.Y.
2. The Certificate of Incorporation was filed by the Department of State of New York on March 25, 1892 pursuant to Chapter 95 of the Laws of 1889 entitled "An act to authorize the formation of corporations for the establishment and maintenance of hospital infirmaries and home for invalids or aged or indigent persons."
3. The corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law with members, and after the amendment of its Certificate effected herein, the corporation shall be a Type B corporation with members.
4. A paragraph which was added to Paragraph Second of the Certificate of Incorporation by Certificate of Amendment of Certificate of Incorporation filed with the Department of State on August 28, 1989 now reads:

"The corporation shall, with the prior written approval of the New York State Department of Social Services, establish and operate a day care center in the County of Ontario, State of New York for a period of five years from the date of the filing of this Certificate of Amendment to the Certificate of Incorporation."

and is being amended to eliminate any reference to a period of five years, to change the reference from the Department of Social Services to the Office of Children and Family Services, and to add a sentence regarding the prior written approval of the Office of Children and Family Services, and so the amended paragraph will be as follows:

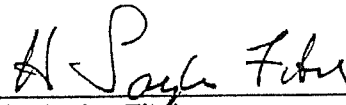
"The corporation shall, with the prior written approval of the New York State Office of Children and Family Services, establish and operate a day care center in the County of Ontario, State of New York. " No certificate of amendment , merger, consolidation or liquidation shall be filed without the prior written approval of the New York State Office of Children and Family Services."

5. The amendment of the Certificate of Incorporation was authorized by the vote of the member of said corporation at a meeting duly called and held on the 22nd day of January, 2003.

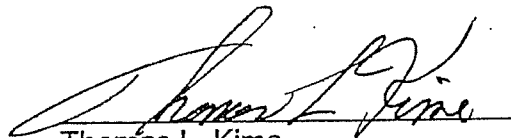
6. The Secretary of State of the State of New York is hereby designated as the agent of the corporation upon whom process in any action or proceeding against the corporation may be served; the post office address to which the Secretary of State shall mail a copy of any such process so served is:

196-198 North Street
Geneva, New York 14456

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 28th day of January, 2003, and affirm under the penalties of perjury that its contents are true.



H. Taylor Fitch
Chair, Board of Trustees



Thomas L. Kime
Secretary, Board of Trustees

**STATE OF NEW YORK
OFFICE OF CHILDREN AND FAMILY SERVICES
ALBANY, NEW YORK**

KNOW ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Section 460-a of the Social Services Law and Section 404(b) of the Not-for-Profit Corporation Law, due inquiry and investigation having been made, approval is hereby given to the filing of the annexed amended certificate of incorporation of:

GENEVA GENERAL HOSPITAL


on the condition that the purposes and duration included in the certificate as filed are consistent with the following purposes and duration:

to establish and operate day care centers for children
in Ontario County in perpetuity.

This approval will, upon filing of the certificate with the Secretary of State, give the corporation the authority to engage in the activities set forth or summarized above for the period of time set forth above. _____

IN WITNESS WHEREOF, this document is executed and the seal of the New York State Office of Children and Family Services is affixed this 14th day of January, 2003

BY: _____


Suzanne Z. Sennett
Director, Bureau of Child Care
Division of Development and
Prevention Services



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

REGIONAL OFFICE DIVISION
Rochester Regional Office

February 11, 2003

Richard H. Pille, Esq.
Hinman, Howard & Kattell LLP
700 Security Mutual Building
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13902-5250

Re: Geneva General Hospital/Day Care
Certificate of Amendment


Dear Mr. Pille:

Thank you for providing this office with the proposed certificate of amendment.

The Attorney General has no objection to the filing of the proposed amendment with the Secretary of State.

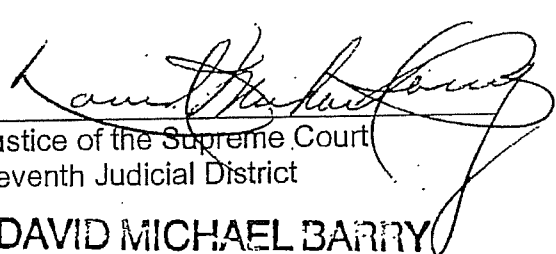
However, please note that such approval is conditioned upon receiving proof of filing of the certificate of amendment so I may close our file on this matter.

Very truly yours,


Audrey Cooper
Assistant Attorney General

The undersigned, DAVID MICHAEL BARRY, a Justice of the Supreme Court of the State of New York, Seventh Judicial District, does hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Geneva General Hospital, Inc. and consent that the same be filed.

Dated: 2-24, 2003
Supreme Court, Monroe County
Rochester, New York


Justice of the Supreme Court
Seventh Judicial District

DAVID MICHAEL BARRY

030227000708

030-15

FILED

2003 FEB 27 PM 3:42

100
STATE OF NEW YORK
DEPARTMENT OF STATE

FEB 27 2003

FILED
TAX S
BY:

[Signature]
GNTA

CERTIFICATE OF AMENDMENT

OF

GENEVA GENERAL HOSPITAL

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

AAR/LR

FEB 27 2 15 PM '03

FILED BY:

HINMAN HOWARD & KATTELL, LLP
80 Exchange Street
P.O. Box 5250
Binghamton, NY 13902-5250

Cust. Ref#918456DAV

030227000732

FEB 4 2 05 PM '03

RECEIVED

6

NYS DEPARTMENT OF STATE

FILING RECEIPT

CH. PURPOSES & POWERS

CORPORATION NAME

GENEVA GENERAL HOSPITAL

<u>DATE FILED</u> 08/28/89	<u>DURATION & COUNTY CODE</u> ONTA	<u>FILM NUMBER</u> C049348-7	<u>CASH NUMBER</u> 464514
<u>NUMBER AND KIND OF SHARES</u>		<u>LOCATION OF PRINCIPAL OFFICE</u>	

TYPE B

*DC

<u>ADDRESS FOR PROCESS</u>	<u>REGISTERED AGENT</u>
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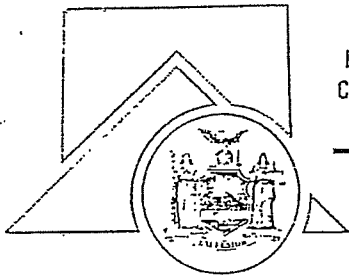
FEES AND/OR TAX PAID AS FOLLOWS:

AMOUNT OF CHECK \$ _____	AMOUNT OF MONEY ORDER \$ <u>00040.00</u>	AMOUNT OF CASH \$ _____
<u>6.00</u> DOLLAR FEE TO COUNTY	\$ 030.00 FILING	
	\$ TAX	
	\$ CERTIFIED COPY	
	\$ CERTIFICATE	
	010.00 MISCELLANEOUS	
	TOTAL PAYMENT \$ 0000040.00	
	REFUND OF \$	

FILER NAME AND ADDRESS

HARRIS BEACH WILCOX RUBIN & LEVY
THE GRANITE BUILDING
130 EAST MAIN STREET
ROCHESTER NY 14604-1 687

TO FOLLOW



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

PUBLIC HEALTH COUNCIL

July 25, 1989

Ms. Linda Oldfield
Harris, Beach & Wilcox
The Granite Building
130 East Main Street
Rochester, New York 14604

Re: Geneva General Hospital
Certificate of Amendment

Dear Ms. Oldfield:

The certificate of amendment of the certificate of incorporation of the above referenced corporation does not require the approval of the Public Health Council for filing with the Department of State, since the certificate neither alters the corporation's purposes under Article 28 of the Public Health Law nor changes its name.

Sincerely,

Karen Westerveit
Executive Secretary

Attachment

STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

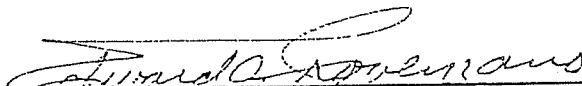
In the Matter of the Application for
for Approval of the
Certificate of Incorporation
of

GENEVA GENERAL HOSPITAL, INC.,
a Not-for-Profit Corporation

APPROVAL
OF
SUPREME COURT

The undersigned, EDWARD O. PROVENZANO, a
Justice of the Supreme Court of the State of New York, Seventh
Judicial District, does hereby approve the foregoing Certificate
of Amendment of the Certificate of Incorporation of Geneva
General Hospital, Inc. and consent that the same be filed.

Dated: AUGUST 25, 1989
Supreme Court, Monroe County
Rochester, New York


Justice of the Supreme Court
Seventh Judicial District



REC'D AUG 10 1989

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. McSPARRON
DEPUTY FIRST ASSISTANT
ATTORNEY GENERAL

Telephone: (518) 473-3683

August 8, 1989

Linda Oldfield, Esq.
Harris, Beach & Wilcox, Esqs.
The Granite Building
130 East Main Street
Rochester, NY 14604

Dear Ms. Oldfield:

RE: GENEVA GENERAL HOSPITAL, INC.

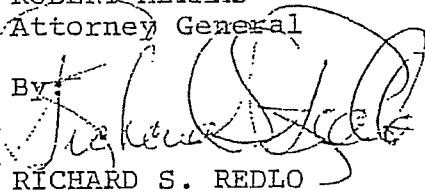
Due and timely service of the notice of application for the approval of the proposed certificate of amendment to the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS
Attorney General

By


RICHARD S. REDLO
Assistant Attorney General

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

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

HARRIS, BEACH, WILCOX, RUBIN AND LEVEY
THE GRANITE BUILDING
130 EAST MAIN STREET
ROCHESTER, NEW YORK 14604-1687

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

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

We, the undersigned, being the Chairman of the Board and the Secretary respectively of GENEVA GENERAL HOSPITAL for the purposes of amending the Certificate of Incorporation under Section 803 of the Not-for-Profit Corporation Law of the State of New York, do hereby certify:

1. The name of the corporation is GENEVA GENERAL HOSPITAL. The name under which the corporation was formed was the MEDICAL AND SURGICAL HOSPITAL OF GENEVA, N.Y.

2. The Certificate of Incorporation was filed by the Department of State of New York on March 25, 1892 pursuant to Chapter 95 of the Laws of 1889 entitled "An act to authorize the formation of corporations for the establishment and maintenance of hospital infirmaries and home for invalids or aged or indigent persons."

3. The corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law with members, and after the amendment of its Certificate effected herein, the corporation shall be a Type B corporation with members.

4. A new paragraph is added to the purposes in Paragraph Second of the Certificate of Incorporation, which paragraph, pursuant to the Regulations of the New York State Department of Social Services, authorizes the operation of a day care facility. The text of the new paragraph is as follows:

"The corporation shall, with the prior written approval of the New York State Department of Social Services, establish and operate a day care center in the County of Ontario, State of New York for a period of five years from the date of the filing of this Certificate of Amendment to the Certificate of Incorporation."

5. The amendment of the Certificate of Incorporation was authorized by the vote of the members of said corporation at a meeting duly called and held on the 17th day of May, 1989.

6. The Secretary of State of the State of New York is hereby designated as the agent of the corporation upon whom process in any action or proceeding against the corporation may be served; the post office address to which the Secretary of State shall mail a copy of any such process so served is:

196-198 North Street
Geneva, New York 14456

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 17th day of May, 1989, and affirm under the penalties of perjury that its contents are true.

W. James Gerling
Chairman of the Board
W. James Gerling

Barbara L. Springstead
Secretary

Barbara L. Springstead

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 460-a of the Social Services Law, and Sections 804 of the Not-for-Profit Corporation Law, due inquiry and investigation having been made, approval is hereby given to the filing of the annexed certificate of amendment of the certificate of incorporation of GENEVA GENERAL HOSPITAL.

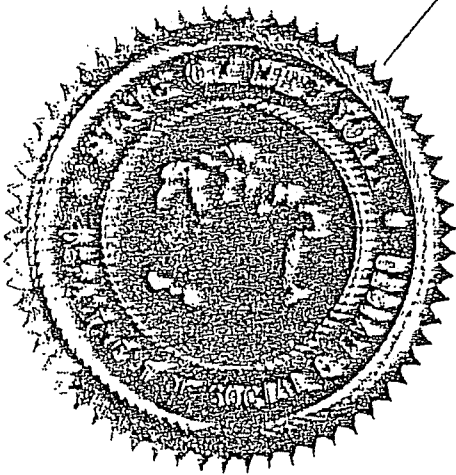
This approval gives the corporation the authority to operate a day care center for a five year period.

IN WITNESS WHEREOF, this document is executed and the seal of the New York State Department of Social Services is affixed this 6th day of July, 1989.

CESAR A. PERALES
Commissioner

BY:

Joseph Semidei
Joseph Semidei
Deputy Commissioner
Division of Services



CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

AA13444

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

Pursuant to the provisions of Section 803 of the Not-for-Profit Corporation Law, the undersigned, being the Chairman and the Secretary respectively, of GENEVA GENERAL HOSPITAL, hereby certify:

1. The name of the Corporation is GENEVA GENERAL HOSPITAL, and the name under which the corporation was formed was the Medical and Surgical Hospital of Geneva, N. Y.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State, Albany, New York, on *MARCH 25*, 1892, pursuant to Chapter 95 of the Laws of 1889 entitled "An act to authorize the formation of corporations for the establishment and maintenance of hospital infirmaries and home for invalids or aged and indigent persons".
3. The Corporation is a corporation as defined in subparagraph (a) (5) of section 102 of the Not-for-Profit Corporation Law of the State of New York (hereinafter referred to as the "Not-for-Profit Corporation Law").
4. The Corporation is a Type B not-for-profit corporation under Section 201 of the Not-for-Profit Corporation Law and shall continue to be a Type B not-for-profit corporation under Section 201 of the Not-for-Profit Corporation Law after the effectiveness of this Certificate of Amendment.

5. The post office address to which the Secretary of State of the State of New York shall mail a copy of any notice required by law is 196-198 North Street, Geneva, New York 14456.

6. The Certificate of Incorporation of the Corporation is hereby amended or changed in the following respects:

Paragraph Second of the Certificate of Incorporation, setting forth the purposes of the Corporation, presently reads as follows:

"That the objects for which said corporation is formed, are to erect, establish, maintain and operate a general hospital, infirmary or home for the reception, care, maintenance, giving of medical and surgical advice, aid and treatment of persons afflicted with maladies or physical injuries or physical weaknesses or deformities or infirmities and free dispensary."

Paragraph Second of the Certificate of Incorporation is hereby amended to add in addition to the above purposes as presently provided in the Certificate of Incorporation, the following provisions:

(a) "To provide on a nonprofit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended; and

The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to, nor inure to the benefit of, any individual; and

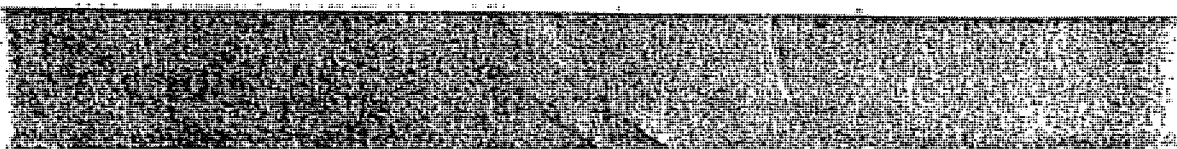
Whether or not previously covered by the powers granted to the Corporation in the Charter or under applicable law, the Corporation is empowered:

To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes of Corporation; and

To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Corporation and its

2



successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development; and

In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation; PROVIDED, HOWEVER, that the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his nominee."

(b) "The Board of Managers is now known and called the Board of Trustees. The number of Trustees of Corporation and manner of election shall be as determined in the By-Laws. The Trustees of the Corporation must, at all times, be members of the Corporation. No nonmember of the Corporation may sit as a Trustee. All Trustees shall serve without compensation for their duties as Trustees."

(c) "No By-laws shall be adopted, or amendment to the By-laws made, which are inconsistent with the provisions of the Certificate of Incorporation or of the Regulatory Agreement which may be executed between the Corporation and the Secretary of Housing and Urban Development."

(d) "So long as the mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development, the Articles of Incorporation may not be further amended without the prior written approval of said Secretary."

7. This Amendment of the Certificate of Incorporation was authorized by the vote of at least two-thirds of the whole number of the Trustees of the Corporation and by the vote of at least two-thirds of the Members of the Corporation present and voting at a special meeting called for such purpose.

8. There were no approvals or consents required to be endorsed on or annexed to the Certificate of Incorporation of the Corporation as defined in Section 102 (a) (3) of the Not-for-Profit Corporation Law. Prior to delivery to the Department of State of the State of New York for filing of this Certificate of Amendment, the approval of the Public Health Council of the State of New York, Department of Health, the approval of a Justice of the Supreme Court of the State of New York, County of Ontario, and the waiver of notice of the Attorney General of the State of New York

will be endorsed upon or annexed to this Certificate of Amendment, the foregoing being all the approvals or consents required by the Not-for-Profit Corporation Law or any other statute of the State of New York.

IN WITNESS WHEREOF, this Certificate of Amendment has been signed this 31st day of May, 1977.

Harry G. Burt
Chairman
HARRY G. BURT
Madeline B. Root
Secretary
MADELINE B. ROOT

STATE OF NEW YORK)
COUNTY OF ONTARIO) ss.:

Harry G. Burt, being duly sworn, deposes and says that he is the Chairman of Geneva General Hospital, the Corporation named in the foregoing Certificate of Amendment; that he has read and signed the same and that the statements contained therein are true.

Subscribed and sworn to
before me this 31st day of
May, 1977

David H. Brind
STATE OF NEW YORK)
COUNTY OF ONTARIO)

DAVID H. BRIND
Notary Public in the State of New York
Ontario County No. 25-0419250
ss.: My Commission Expires March 31, 1979

Madeline B. Root, being duly sworn, deposes and says that she is the Secretary of Geneva General Hospital, the Corporation named in the foregoing Certificate of Amendment; that she has read and signed the same and that the statements contained therein are true.

Madeline B. Root
Subscribed and sworn to
before me this 31st day of
May, 1977

David H. Brind
DAVID H. BRIND
Notary Public in the State of New York
Ontario County No. 25-0419250
My Commission Expires March 30, 1979



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

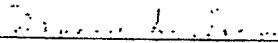
PUBLIC HEALTH COUNCIL

June 27, 1977

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 24th day of June, 1977, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Geneva General Hospital is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.


MARIANNE K. ADAMS
Secretary

Sent to: David H. Brind, Esq.
17 Seneca Street
P.O. Box 409
Geneva, New York 14456

cc: Geneva General Hospital
196-198 North Street
Geneva, New York 14456

JUN 29 1977

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
BLONEVA P. BOND
GORDON E. BROWN
JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST

MORTON P. HYMAN
MSGR. CHARLES J. FAHEY
W. KENNETH RILAND, D.O.
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
KENNETH W. WOODWARD, M.D.

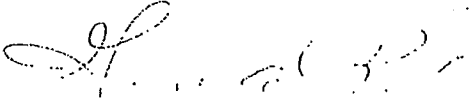
COMMISSIONER OF HEALTH
ROBERT P. WHALEN, M.D.
EX OFFICIO

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The undersigned, a Justice of the Supreme Court of the State of New York, County of Ontario, wherein is located the principal office of Geneva General Hospital, hereby approves the within Certificate of Amendment of the Certificate of Incorporation of Geneva General Hospital, and the filing thereof.

DATED: May 27, 1977


Justice of the Supreme Court

Notice of Application Waived (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

DATED: May 25, 1977


Attorney General of the State of N.Y.
by: 
Assistant Attorney General

State of New York }
Department of State } ss.

19871

I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on

JUL 7 1977


Secretary of State

A413444-7

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
GENEVA GENERAL HOSPITAL

DAVID H. BRIND
ATTORNEY AND COUNSELLOR AT LAW
~~XXXXXXXXXXXX~~
GENEVA, NEW YORK 14456
P.O. Box 409

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX: None
FILING FEE: 1.00

FILED JUL 7 - 1977

Transmissions
Secretary of State
35 Ontario
Type B

NEP Type B

made 10/20/24

orig. Medical & Surgical Hospital

Geneva, N.Y.

3/25/1972

Geneva, Ontario Co.

447-168

not add. 198 North St.

Geneva, N.Y.

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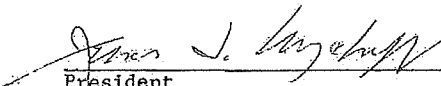
CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION OF
GENEVA GENERAL HOSPITAL

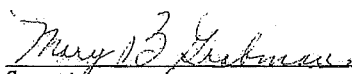
Under Section 113 of the Not-For-Profit Corporation Law

We the undersigned President and Secretary of GENEVA
GENERAL HOSPITAL certify:

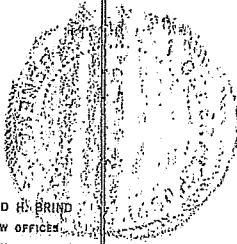
1. The name of the corporation is GENEVA GENERAL HOSPITAL.
2. The name under which the corporation was originally incorporated was MEDICAL AND SURGICAL HOSPITAL OF GENEVA, N.Y. incorporated under Chapter 95 of the laws of 1889 by certificate filed with the Secretary of State on March 25, 1892.
3. The amendment to the certificate of incorporation changing the name to GENEVA GENERAL HOSPITAL was filed by the Secretary of State on December 20, 1924 pursuant to the General Corporation Law.
4. The post office address within the State of New York to which the Secretary of State shall mail a copy of any notice required by law is 198 North Street, Geneva, New York.
5. Under Section 201 (Purposes) of the Not-For-Profit Corporation Law, GENEVA GENERAL HOSPITAL is a Type B Not-For-Profit Corporation as defined in this chapter.

IN WITNESS WHEREOF, we have executed this Certificate this
12th day of March, 1971.


President


Secretary

DAVID H. BRIND
LAW OFFICES
GENEVA, NEW YORK



STATE OF NEW YORK)
) SS:
COUNTY OF ONTARIO)

JAMES I. WYCKOFF and MARY B. GRABMAN, each being severally duly sworn, severally depose and say, each for himself, that he JAMES I. WYCKOFF, is the President of GENEVA GENERAL HOSPITAL, and she MARY B. GRABMAN, is the Secretary of said Corporation; that they have read the foregoing Certificate of Type of Not-For-Profit Corporation of GENEVA GENERAL HOSPITAL, under Section 113 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters they believe it to be true.

James I. Wyckoff
President

Mary B. Grabman
Secretary

Sworn to before me this

12 day of *March*, 1971

Alma M. Mangano
Notary Public

ALMA M. MANGANO
Notary Public, State of New York
The County of Ontario
Term of Office expires March 19, 1972

DAVID H. BRIND
LAW OFFICES
GENEVA, NEW YORK

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CERTIFICATE OF TYPE OF
NOT-FOR PROFIT CORPORATION

OF
GENEVA
GENERAL
HOSPITAL

Date: 1971

DAVID H. BRIND
ATTORNEY AND COUNSELLOR AT LAW
435 EXCHANGE STREET
GENEVA, NEW YORK 14456

FILED
JUN 15 1971

Donald H. Brind
DAVID H. BRIND
ATTORNEY AND COUNSELLOR AT LAW
435 EXCHANGE STREET
GENEVA, NEW YORK 14456

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444P-1168

name and 12/20/24

Barbara Osterman

avg - medical and nursing

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no type filed

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 3 1971

PAY \$ 1.00
FILING FEE \$

Paul P. Brind

DEPARTMENT OF STATE

FILE

350 Davis

Type 8

CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION OF
GENEVA GENERAL HOSPITAL

Under Section 133 of the Not-For-Profit Corporation Law

We the undersigned President and Secretary of GENEVA GENERAL HOSPITAL
certify;

1. The name of the corporation is GENEVA GENERAL HOSPITAL.
2. The name under which the corporation was originally incorporated was
MEDICAL AND SURGICAL HOSPITAL OF GENEVA, N.Y. incorporated under Chapter
95 of the laws of 1889 by certificate filed with the Secretary of State on April 3, 1892.
3. The amendment to the certificate of incorporation changing the name to
GENEVA GENERAL HOSPITAL was filed by the Secretary of State on December 20,
1924 pursuant to the General Corporation Law.
4. The Post office address within the State of New York to which the Secretary of
State shall mail a copy of any notice required by law is 198 North Street, Geneva, New
York.
5. Under Section 201 (Purposes) of the Not-For-Profit Corporation Law, GENEVA
GENERAL HOSPITAL is a Type B Not-For-Profit Corporation as defined in this chapter.

IN WITNESS WHEREOF, we have executed this Certificate this 12th day of March,
1971.

/s/ James I. Wyckoff
President

/s/ Mary B. Grabman
Secretary

CERTIFICATE OF INCORPORATION

GENEVA GENERAL HOSPITAL

"We, the undersigned, desiring to form a corporation for the purpose of erecting, establishing, maintaining and operating a hospital infirmary and home for reception care, maintenance, giving of medical and surgical advice, aid and treatment to persons afflicted with maladies or physical injuries or physical weakness or deformities or infirmities and free dispensary pursuant to the provisions of an Act passed by the Legislature of the State of New York, March 29, 1889, and entitled 'An Act to Authorize the formation of Corporations for the Establishment and Maintenance of hospitals, infirmaries, dispensaries, and homes for invalids or aged and indigent persons' do hereby certify:

That the Corporate Name of the Corporation is 'The Medical and Surgical Hospital of Geneva, N.Y.'

That the objects for which said Corporation is formed are to erect, establish, maintain and operate a general hospital, infirmary, or home for the reception care, maintenance, giving of Medical and Surgical advice, aid and treatment to persons afflicted with maladies or physical injuries, or physical weaknesses or deformities or infirmities, and free dispensary.

That the following are the names of the persons who shall form the board of managers of said Corporation for the first year, to wit: Henry L. Slosson, Montgomery S. Sanford, Eldreth A. Walton, Anna L. Sweet, George F. Ditmars, Elizabeth S. Martin, Catharine A. Covert, Mrs. Catharine J. Nelson and Mrs. Susie Maxwell.

That the term of existence and duration of said Corporation shall be perpetual.

That said Hospital, home infirmary or dispensary is to be located in the Village of Geneva, Ontario County, New York.

In witness whereof we have hereunto set our hands this 22nd day of March 1892.

Catharine A. Covert

Elizabeth S. Martin

S. H. VerPlanck

Mrs. T. C. Maxwell

T. C. Maxwell

Mrs. Catharine J. Nelson

T. S. Hubbard

John V. Ditmars

Henry L. Slosson

David Moore

Montgomery S. Sanford

A. P. Rose

A. L. Sweet

Jas H. Stebbins

E. A. Walton

Geo. F. Ditmars

Geo. L. Bachmann

N. B. Covert

H. M. Eddy

S. E. Smith

Executed before Henry Ludlow, Notary Public, March 22, 1892.

Filed with Secretary of State, March 25, 1892.

By an Order of the Supreme Court granted at Special Term in the City of Rochester, New York, on the 31st day of May, 1892, the name of the Institution was changed to 'THE GENEVA CITY HOSPITAL'.

By a Certificate of Change of Name filed in the Office of the Secretary of State, December 20, 1924, the name of the Institution was changed to "GENEVA GENERAL HOSPITAL."

STATE OF NEW YORK)
) SS:
COUNTY OF ONTARIO)

JAMES I. WYCKOFF and MARY B. GRABMAN, each being severally duly sworn, severally depose and say, each for himself, that he JAMES I. WYCKOFF, is the President of GENEVA GENERAL HOSPITAL, and she MARY B. GRABMAN, is the Secretary of said Corporation; that they have read the foregoing Certificate of Type of Not-For-Profit Corporation of GENEVA GENERAL HOSPITAL, under Section 113 of the Not-For-Profit Corporation Law and know the contents thereof, that the same is true to their own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters they believe it to be true.

/s/ James I. Wyckoff
 President

/s/ Mary B. Grabman
 Secretary

Sworn to before me this
12th day of March 1971

/s/ David H. Brind
 Notary Public

CERTIFICATE OF CHANGE OF NAME OF THE
GENEVA CITY HOSPITAL TO THE GENEVA GENERAL HOSPITAL.

(Pursuant to Section 60 of the General Corporation Law)

We, Iouan Harris and Sterling B. Ragsdale, being respectively the President and Assistant Secretary of the Geneva City Hospital certify:

First. The name of this Corporation is "The Geneva City Hospital"; that it was originally incorporated under the name of the "Medical and Surgical Hospital, of Geneva, N. Y.", under the laws of 1899, chapter 95; that the corporate name was changed by an order of the Supreme Court, which was filed and entered with the Secretary of State on June 3, 1898, to that of "The Geneva City Hospital."

Second. The Certificate of Incorporation was filed in the Office of the Secretary of State on April 3, 1892.

Third. The new name to be assumed by this Corporation is the "Geneva General Hospital".

IN WITNESS WHEREOF, We have hereunto subscribed this Certificate in triplicate, this 15th day of December, 1924.

Iouan Harris, President (L.S.)

S. B. Ragsdale, Assistant Secretary (L.S.)

STATE OF NEW YORK, County of Ontario. ss:

On this 15th day of December, 1924, before me personally came Iouan Harris and Sterling B. Ragsdale, being _ me known and known to me to be the same persons described

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Page 411

in and who executed the foregoing Certificate of Change of Name and they thereupon severally duly acknowledged to me that they executed the same.

Ellen G. Clark, Notary Public.

STATE OF NEW YORK, County of Ontario. ss:

Iouan Harris and Sterling B. Ragsdale being duly sworn and each for himself deposes and says that he, Iouan Harris is the President of the Geneva City Hospital and he, Sterling B. Ragsdale is the Assistant Secretary thereof; that they were duly authorized to execute and file the foregoing certificate of Change of Name of Said Corporation by the vote of a majority of the members of record of the corporation who were entitled to vote on the Change of Name, cast in person or by proxy at a meeting of the members held upon notice prescribed for the annual meeting of the Corporation, at 50 Geneva Street, in the City of Geneva, New York, on the 15th day of December, 1924, at 4 o'clock in the afternoon.

Iouan Harris, President (L.S.)

S. B. Ragsdale, Assistant Secretary, (L.S.)

Sworn to before me this 15th day of December, 1924.

Ellen G. Clark, Notary Public, Ontario County.

A true copy of the original. Recorded 23 December, 1924 at 9 A. M. and examined.

(Sanitation Proceedings Immeled. See N.Y. State Bulletin of Jan 15, 1953)

By Court Order
Lucy M. Bell, Clerk.

**AMENDED AND RESTATED BYLAWS
FOR
GENEVA GENERAL HOSPITAL**

TABLE OF CONTENTS

ARTICLE I	THE CORPORATION.....	1
Section 1.	Name	1
Section 2.	Offices	1
Section 3.	Purposes.....	1
Section 4.	Definition of “Affiliate”	1
ARTICLE II	MEMBERSHIP.....	2
Section 1.	Definition	2
Section 2.	Annual Meeting.....	2
Section 3.	Action by Member	2
Section 4.	Reserved Powers of Health System	2
Section 5.	Reserved Powers of the University of Rochester, as Sole Member of Health System	3
Section 6.	Powers Not Granted to UR or Health System	4
Section 7.	Conveyances	4
ARTICLE III	BOARD OF TRUSTEES	4
Section 1.	Management of the Corporation	4
Section 2.	Size	5
Section 3.	Election	5
Section 4.	Election	5
Section 5.	Chiefs of Staff.....	6
Section 6.	Presidents of Corporation and SSMH.....	6
Section 7.	Treasurers	6
Section 8.	Qualifications of Trustees	6
Section 9.	Annual Election of Elected Community Trustees and Terms of Office	7
Section 10.	Vacancies	7
Section 11.	Filling of Vacancies	8
Section 12.	Removal of Trustees.....	8
Section 13.	Compensation	8
Section 14.	Conflict of Interest	9
Section 15.	Resignation.....	9
Section 16.	Property Rights of Trustees.....	9
ARTICLE IV	OFFICERS.....	9
Section 1.	Officers of the Corporation	9
Section 2.	Officers to be Elected from the Board	9
Section 3.	Officers Other Than Those Required to be Elected From the Board	10
Section 4.	Chair of the Board	10
Section 5.	Vice Chair of the Board	10
Section 6.	President	10
Section 7.	Secretary	11
Section 8.	Treasurer and Chief Financial Officer.....	11
Section 9.	Other Officers.....	12
Section 10.	Removal of Officers.....	12
ARTICLE V	TRUSTEES AND OFFICERS	12
Section 1.	Duty.....	12
Section 2.	Indemnification	12

Section 3.	Insurance.....	13
Section 4.	Loans	13
Section 5.	Fidelity Bonds.....	13
ARTICLE VI	MEETINGS OF THE BOARD OF TRUSTEES.....	13
Section 1.	Annual Meeting.....	13
Section 2.	Regular Meetings	13
Section 3.	Special Meetings	14
Section 4.	Place of Board Meetings	14
Section 5.	Notice of Meetings.....	14
Section 6.	Quorum.....	14
Section 7.	Action Without a Meeting	15
Section 8.	Participation by Conference Telephone.....	15
Section 9.	Required Vote	15
Section 10.	Class Voting.....	15
Section 11.	Real Property Transactions	16
Section 12.	Adjournment of Meetings.....	16
Section 13.	Rules Governing Conduct of Meetings.....	16
ARTICLE VII	COMMITTEES.....	16
Section 1.	General Provisions	16
Section 2.	Committee Authority	17
Section 3.	The standing committees of the board are:	17
Section 4.	Executive Committee	18
Section 5.	Administrative Committee.....	19
Section 6.	Audit and Finance Committee	20
Section 7.	Joint Conference Committee	21
Section 8.	Nominating Committee.....	23
Section 9.	Properties and Facilities Committee	23
Section 10.	Systems Assessment/Improvement Committee.....	24
Section 11.	Credentials Committee	25
Section 12.	Community Advisory Committee	26
Section 13.	Search Committee.....	27
Section 14.	Special Committees.....	27
ARTICLE VIII	MEDICAL STAFF	27
Section 1.	Organization.....	27
Section 2.	Appointment	28
Section 3.	Duties of the Medical Staff	28
Section 4.	Bylaws of the Medical Staff.....	28
Section 5.	Vice President, Medical Affairs & Chief Medical Officer.....	29
ARTICLE IX	AUXILIARY	29
Section 1.	.....	Error! Bookmark not defined.
Section 2.	.....	Error! Bookmark not defined.
Section 3.	.....	Error! Bookmark not defined.
Section 4.	.....	Error! Bookmark not defined.
Section 5.	.....	Error! Bookmark not defined.
ARTICLE X	CODE OF ETHICS	30

Section 1.	.....	Error! Bookmark not defined.
Section 2.	.....	Error! Bookmark not defined.
Section 3.	.....	Error! Bookmark not defined.
Section 4.	.....	Error! Bookmark not defined.
Section 5.	.....	Error! Bookmark not defined.
Section 6.	Error! Bookmark not defined.
Section 7.	Error! Bookmark not defined.

ARTICLE XI	STANDARDS	31
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ARTICLE XII	AMENDMENTS.....	32
--------------------	------------------------	-----------

ARTICLE XIII	FISCAL YEAR.....	32
---------------------	-------------------------	-----------

ARTICLE XIV	CORPORATE SEAL	32
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BYLAWS OF
GENEVA GENERAL HOSPITAL

ARTICLE I

THE CORPORATION

Section 1. Name

The name of the Corporation is GENEVA GENERAL HOSPITAL ("the Corporation").

Section 2. Offices

The principal office of the Corporation shall be in the City of Geneva, County of Ontario, State of New York. The Corporation may also have offices at such other places within the State of New York as the Board of Trustees may from time to time determine, as the business of the Corporation may require.

Section 3. Purposes

The purposes of the Corporation shall be:

(a) To plan, develop, establish, organize, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain, operate and manage all types of in-patient and outpatient hospitals, hospital facilities, clinics, treatment centers and programs for the delivery of acute medical, surgical and preventive health care services.

(b) To plan, develop, establish, organize, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain, operate and manage nursing homes and all types of long term in-patient, out-patient and residential health care facilities and programs for elderly, sick, invalid, infirm, disabled convalescent persons.

(c) To participate in any activity designed and carried on to promote the general health and welfare of the community in which the Corporation is located.

(d) To do any other act or thing incidental to or connected with the foregoing purposes or in the advancement thereof, but not for the pecuniary profit or financial gain of any of its members, Trustees, officers or any private person.

(e) To have such purposes as are now or may hereafter be set forth in the Certificate of Incorporation of the Corporation, and to have and exercise such powers in furtherance of its purposes as are now or may hereafter be set forth in the Certificate of Incorporation.

Section 4. Definition of "Affiliate"

The term "Affiliate" as used in these Bylaws refers to any entity that is directly or indirectly controlled by or under common control with the Corporation, or in which the Corporation has an ownership interest. This includes but is not limited to entities in which the Corporation or an Affiliate is or becomes the sole or a controlling member or sole or controlling shareholder.

ARTICLE II
MEMBERSHIP

Section 1. Definition

The sole member of the Corporation is Finger Lakes Regional Health System, Inc. (d/b/a Finger Lakes Health), hereinafter called the "Member" or "Health System." The sole member of Health System is the University of Rochester, a New York not-for-profit education corporation, hereinafter called "UR."

Section 2. Annual Meeting

The Annual Meeting of the Corporation for the election of Trustees and for the transaction of such other business as may properly come before the meeting shall be held at such time and location as may be designated by the Member.

Section 3. Action by Member

Any action required or permitted to be taken by Health System in its capacity as the Member of the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be taken by Health System through written consent to such action. The written consent of Health System shall be evidenced by a resolution of the Board of Directors of Health System, signed by an officer of Health System, following action by the Board of Directors of Health System in accordance with Health System's Certificate of Incorporation, Bylaws, policies and procedures.

Section 4. Reserved Powers of Health System

The following powers are reserved to Health System in its role as the sole member of the Corporation consistent with the New York State Health Department regulations for passive parents of corporate affiliates to be exercised in accordance with the terms of the certificate of incorporation of the Corporation, these Bylaws, and applicable law:

- A. To appoint and remove, with or without cause, members of the Corporation's Board of Trustees;
- B. To approve any aspects of the Corporation's strategic plan that would (i) result in a call upon the financial resources of UR not dedicated for support of the Corporation and its Affiliates; (ii) have a major impact on UR's academic programs, or (iii) contravene a policy of the UR established by the UR Board of Trustees;
- C. To approve any aspects of the capital and operating budgets of the Corporation that would (i) result in a call upon UR's financial resources not dedicated for support of the Corporation and its Affiliates; (ii) have a major impact on UR's academic programs, or (iii) contravene a policy of UR established by the UR Board of Trustees;
- D. To approve the incurrence of any debt proposed by the Corporation, including the issuances of bonds, that would (i) result in a call upon UR's financial resources not dedicated for support of the Corporation and its Affiliates, (ii) have a major impact on UR academic programs, (iii) contravene a policy of UR established by the UR Board of Trustees, or (iv) adversely affect UR's ability to issue tax exempt debt; and

- E. To approve any amendments to the Corporation's certificate of incorporation or bylaws;
- F. To approve any merger, consolidation or dissolution of the Corporation;
- G. To approve the sale, lease, mortgage or other disposition of all or substantially all of the assets of the Corporation;
- H. To approve actions taken by the Corporation as the member or shareholder of an Affiliate of the Corporation; and
- I. To approve all other matters and take all other actions reserved to members of not-for-profit corporations under New York State law.

Section 5. Reserved Powers of the University of Rochester, as Sole Member of Health System

As the sole member of Member, UR shall have the following reserved powers:

- A. To approve any aspects of the strategic plan of the Corporation that would (i) result in a call upon the financial resources of UR not dedicated for support of Health System, and/or the Corporation; (ii) have a major impact on UR academic programs, or (iii) contravene a UR policy established by the UR Board of Trustees;
- A. To approve any aspects of the capital and operating budgets of the Corporation that would (i) result in a call upon UR's financial resources not dedicated for support of Health System and/or the Corporation; (ii) have a major impact on UR academic programs, or (iii) contravene a UR policy established by the UR Board of Trustees;
- B. To approve the incurrence of any debt proposed by the Corporation, including the issuances of bonds, that would (i) result in a call upon UR's financial resources not dedicated for support of Health System and/or the Corporation, (ii) have a major impact on UR academic programs, (iii) contravene a UR policy established by the UR Board or Trustees, or (iv) adversely affect UR's ability to issue tax exempt debt; and
- C. To approve any amendment to the bylaws or the certificates of incorporation of the Corporation.

UR shall not exercise the powers listed above in any manner that would cause the Health System or the Corporation to violate: (a) the covenants of their respective debt documents or any other written agreements existing as of August 1, 2023; or (b) their respective charitable purposes, including the use or investment of Health System assets for purposes that are not consistent with such charitable purposes.

Any action required or permitted to be taken by UR in its capacity as the sole member of Health System shall be taken by written consent of the Chief Executive Officer of the University of Rochester Medical Center ("URMC CEO"), and delivered to the President of the Corporation or the President's designee and maintained in the corporate records of the Corporation.

Section 6. Powers Not Granted to UR or Health System.

Notwithstanding anything to the contrary in Article II, Sections 4 and 5, above, the authority with respect to the following shall remain vested with the Board of Trustees of the Corporation, subject to any limitations included in the certificate of incorporation of the Corporation or these bylaws:

- A. To appoint or dismiss management level employees (other than the President and CEO) or credential, appoint, suspend or dismiss medical staff;
- B. To approve operating and capital budgets except to the extent set forth in Article II, Sections 4 and 5 above;
- C. To adopt and approve operating policies and procedures;
- D. To approve Certificate of Need (CON) applications;
- E. To approve debt necessary to finance the cost of compliance with operational or physical plant standards required by law or to finance the activities and construction proposed by any CON application except to the extent set forth in Article II, Sections 4 and 5 above;
- F. To approve contracts for management or for clinical services; or
- G. To approve settlements of administrative proceedings or litigation, except approval of settlements of litigation that exceed insurance coverage.

Section 7. Conveyances.

Notwithstanding anything to the contrary in these bylaws, any conveyance of all or substantially all of the real property of, or all or substantially all of the tangible and intangible assets of the Corporation or any Affiliate of the Corporation: (a) shall be subject to approval of UR, the Member and by the Board of Trustees by Class Voting requirements, as may be applicable, as well as any other necessary third parties; (b) shall not be inconsistent with the conveyer's commitments or warranties under any loan or other financial commitment; and (c) shall be subject to a right of first refusal of UR to purchase the real property or assets being sold.

ARTICLE III

BOARD OF TRUSTEES

Section 1. Management of the Corporation

Subject to the reserved powers of UR and the Member as set forth in these bylaws, the Corporation shall be managed by its Board of Trustees which shall have the power and authority to do and perform all acts and functions not inconsistent with these bylaws and the laws of the State of New York.

Section 2. Size

The board of the Corporation shall have between seventeen (17) and twenty (20) Trustees elected as described in Sections 3.1(B) and 4 below, plus the ex officio Trustees who shall serve while holding the offices described in Article III, Sections 3, 5, 6, 7 and 8 below. The number of Trustees may be changed by action of FLH or UR, provided that no decrease in the number of Trustees shall shorten the term of any incumbent Trustee. The phrase "entire board" as used in these bylaws means the total number of Trustees entitled to vote which the Corporation would have if there were no vacancies and shall include the sum of the total number of ex officio Trustees (as if there were no vacancies) plus (a) the number of Trustees within the aforementioned range as fixed by the Member (whether elected or appointed and as if there were no vacancies), or (b) if the Member has not so fixed the number of elected and appointed Trustees within such range, the number of Trustees within such range that were elected or appointed as of the most recently held election of directors (as if there were no vacancies), as well as any Trustees whose terms have not yet expired.

Section 3. Election

3.1 There shall be two voting groups of Trustees: University of Rochester Medical Center ("URMC") Trustees and Community Trustees. The URMC Trustees shall never be less than three (3) Trustees.

- A. The URMC Trustees shall include the URMC CEO, who shall serve ex officio with vote; the URMC Vice President designated by the URMC CEO with responsibility for coordinating the URMC Healthcare System (the "URMC Vice President") who shall serve ex officio with vote; and one or more other individuals appointed by the URMC CEO, each of whom shall serve ex officio with vote. The URMC CEO shall make a good faith effort to appoint at least one (1) individual to this group who resides in the Corporation's Service Area.¹Collectively, the URMC Trustees shall be the "URMC Class of Trustees."
- B. The Community Trustees shall include those individuals who are elected as described in Article III, Sections 4, 9 and 11 and those who serve ex officio with vote as described in Article III, Sections 5 and 6. Collectively, these elected and ex officio Trustees shall be the "Community Class of Trustees."

3.2 If the total number of Trustees serving on the Board changes, the number of individuals in the URMC Trustees and the Community Trustees shall change proportionately, provided that the number of URMC Trustees shall never be less than three (3).

Section 4. Election

At its Annual Meeting, the Member shall elect successors for the elected Community Trustees whose terms have expired or who have died, resigned, or been removed, from candidates nominated by the Nominating Committee, as specified in Article III, Section 8, below.

¹ For this purpose, the Corporation's Service Area is currently defined as Bellona (zip code 14415), Branchport (14418), Clyde (14433), Clifton Springs (14432), Dresden (14441), Dundee (14837), Geneva (14456), Hammondsport (14840), Himrod (14842), Interlaken (14847), Keuka Park (14478), Lodi (14860), Lyons (14489), Ovid (14521), Penn Yan (14527), Phelps (14532), Prattsburgh (14873), Romulus (14541), Rushville (14544), Seneca Falls (13148), Stanley (14561) and Waterloo (13165).

Section 5. Chiefs of Staff

During their respective tenures in office, the President of the Medical Staff of Soldiers and Sailors Memorial Hospital of Yates County (SSMH), and the Chief of Staff of the Corporation shall each be a member of the Board of Trustees, ex officio with vote, unless the medical staff of the Corporation, acting pursuant to its bylaws, elects another staff representative to act in the place of and instead of the Chief of Staff as the voting representative on the Board of Trustees for a term of one (1) year. If the same person holds both of these positions they shall have only one vote. The person(s) serving on the board pursuant to this Section, shall be in addition to the number of elected Trustees provided in Article III, Section 2.

Section 6. Presidents of Corporation and SSMH

During the person's tenure in that office, the President of the Corporation and the President of SSMH shall each be a member of the Board of Trustees, ex officio with vote. If the same person holds both of these positions they shall have only one vote. The person(s) serving on the board pursuant to this Section shall be in addition to the number of elected Trustees provided in Article III, Section 2.

Section 7. Treasurers

During the person's tenure in that office, the Treasurer & Chief Financial Officer of the Corporation and the Treasurer of SSMH shall each be a member of the Board of Trustees, ex officio without vote. The person(s) serving on the board pursuant to this Section shall be in addition to the number of elected Trustees provided in Article III, Section 2.

Section 8. Qualifications of Trustees

There are no limiting qualifications for a Trusteeship, except as described above and that each Trustee must be at least eighteen (18) years of age. It is the intent of the Corporation that the elected Community Trustees fairly represent the regional service area of the Corporation; and, whenever possible, the Nominating Committee is to avoid a board composition which would result in more than one (1) elected Community Trustee being employed by the same area business or organization. Elected Community Trustees may be selected from outside the service area if they possess specific skills and/or experience of value to the Corporation.

The Nominating Committee will use the following guidelines for screening candidates for service as Community Trustees. The guidelines are aids to the Nominating Committee and are not intended to supplement the judgment of the Committee, the Board of Trustees or the Member in Community Trustees.

- (1) Experience in health care organizations as a governing body member.
- (2) Broadly representative of characteristics of the community, e.g., age, geography, business and/or community organization diversity.
- (3) Has made significant contributions to community through occupation, personal enterprise, service in other community organizations.
- (4) Is generally regarded as having high ethical standards.

- (5) Has management experience in the complex organizations and problem solving techniques.
- (6) Has experience serving in highly regulated health related areas in New York State.
- (7) Has experience in various arenas of particular importance to organizations, e.g., quality control, planning, finance, communications, community relations.
- (8) Is, or has been, a direct provider of health care services.

Section 9. Annual Election of Elected Community Trustees and Terms of Office

- A. The annual election of the Community Trustees shall take place at the Annual Meeting of the Corporation.
- B. All Community Trustees shall qualify to take office by delivering a written acceptance to the Secretary of the Corporation. Community Trustees who have qualified shall take office at the conclusion of the Annual Meeting of the Corporation at which they are elected.
- C. The elected Community Trustees shall be divided into five (5) classes as nearly equal in number as possible, and the terms of the several classes shall expire in successive years, so that a class of Community Trustees shall be elected regularly in each year.
- D. The regular term of office of elected Community Trustees shall be five (5) years. No Community Trustee shall serve for more than two (2) successive terms (regardless of the length of the terms), provided, however, that a person may be elected again after an absence from the board for at least one (1) year; provided, further that the board may, by vote at any meeting, nominate a person to be elected again after an absence of less than one (1) year. A Community Trustee may, however, have their term extended not longer than two (2) additional years in order to serve as Chair of the Board and a Community Trustee completing their second term in the position of Chair of the Board may have that term extended by one (1) year in order to support a smooth transition of the duties of that office. Notwithstanding anything herein to the contrary, the current terms of the elected Community Trustees as of the date of adoption of these Amended and Restated Bylaws ("Current Trustees") (i.e., August 1, 2023) shall be extended by three (3) additional years, and the extension of such terms shall not count toward the term limits set forth in this Section 9(D). For any Community Trustee whose term expires on or before July 31, 2028, their successor shall be elected by the Member from candidates nominated by the Nominating Committee of the Corporation. In the event the Member does not approve a nominee, the Member will request that the Nominating Committee nominate another candidate. For any Community Trustee whose term expires on or after August 1, 2028, UR will elect their successor from candidates nominated by the Nominating Committee.

Section 10. Vacancies

At the option of the board, a vacancy on the Board of Trustees shall occur:

- (a) If a newly elected Community Trustee shall fail to deliver to the Secretary of the Corporation a written acceptance of their Trusteeship within thirty (30) days of the mailing of a written notice of election, or

(b) If a Community Trustee is absent, without an excuse or explanation which is satisfactory to the board, from more than one-third (1/3) of the total meetings in any one calendar year, or

(c) After five (5) years have elapsed from the date of adoption of these Amended and Restated Bylaws (i.e., after July 31, 2028), upon the removal of a Community Trustee by UR.

Section 11. Filling of Vacancies

(a) Before August 1, 2028, a vacancy on the board of an elected Community Trustee may be filled for the unexpired term by an individual nominated by the Corporation's Nominating Committee, approved by the Board of Trustees at an election to be held at any regularly scheduled board meeting, provided that such election is included on the agenda of the regular meeting notice given for that meeting and provided that no vacancy shall be filled at the board meeting at which notice is first given that such vacancy exists, and subject to approval by UR. On and after August 1, 2028, vacancies on the board of elected Community Trustees shall be filled by the Member from candidates nominated by the Nominating Committee.

(b) A Community Trustee elected in the above manner shall take office on the date designated by the Member or the URMCE CEO, as the case may be, at the time of election, provided the Community Trustee has first qualified by delivering a written acceptance of the Trusteeship to the Secretary of the Corporation.

(c) URMCE Trustee vacancies occurring for any reason shall be filled by UR.

Section 12. Removal of Trustees

(a) Until August 1, 2028, any elected Community Trustee may be removed with cause by vote of two-thirds (2/3) of the Trustees present provided there is a quorum at a meeting at which such action is taken. Notice of a proposed removal must be set forth in the notice of the meeting to be given at least ten (10) days in advance and the Trustee to be removed shall be afforded an opportunity to be heard and may vote upon the issue of their removal.

(b) Until August 1, 2028, any elected Community Trustee may be removed with or without cause by the Member at any time.

(c) After five (5) years have elapsed from the date of adoption of these Amended and Restated Bylaws (i.e., after July 31, 2028), any elected Community Trustee may be removed with or without cause by UR.

(d) Any URMCE Trustee may be removed with or without cause by UR at any time.

Section 13. Compensation

The Trustees shall not receive any compensation for their services as Trustees but they may be reimbursed for any reasonable expenses incurred on behalf of the Corporation. However, a Trustee may serve the Corporation in another capacity and may receive compensation therefor.

Section 14. Conflict of Interest

The Trustees and Officers of the Corporation will comply with the Conflict of Interest Policy adopted by the Board of Trustees and as amended from time to time (the "Conflict of Interest Policy").

Section 15. Resignation

A Trustee may resign at any time by giving written notice to the Board, the Chair or the Secretary of the Corporation. The recipient of such notice shall promptly notify the URMCE CEO. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

Section 16. Property Rights of Trustees

No Trustee of the Corporation shall have any rights or interests in or to the property or assets of the Corporation. In the event that the Corporation is liquidated or dissolved or ceases to actively carry on its business, all of the remaining property and assets of the Corporation after necessary expenses thereof shall be distributed to such organizations as shall qualify under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the attorney general or a Justice of the Supreme Court of the State of New York.

ARTICLE IV

OFFICERS

Section 1. Officers of the Corporation

The officers of the Corporation shall be:

- (a) Chair of the Board
- (b) Vice Chair of the Board
- (c) President
- (d) Secretary
- (e) Treasurer

Section 2. Officers to be Elected from the Board

(a) The Officers, other than the President and Treasurer, shall be elected from the Community Trustees who are not ex officio Trustees. No two of these offices shall be held by the same person.

(b) The Officers shall be elected at the Annual Meeting of the Board of Trustees. They shall serve for one (1) year and until their successors have been elected and qualified.

(c) In the event of a vacancy in any of these offices between Annual Meetings, the board shall elect a replacement for the balance of the term at the next regular or special meeting of the board after notice of the vacancy has been given to each board member.

Section 3. Officers Other Than Those Required to be Elected From the Board

(a) The President and CEO employed at the time of the adoption of these Amended and Restated Bylaws shall continue to serve in such capacity pursuant to any employment contracts then in effect. Thereafter, the President and CEO shall be appointed, and except as set forth in Article VII, Sections 5(b)(3) and (4), their annual compensation determined by the Board pursuant to Class Voting, as set forth in Article VI, Section 10.

(b) The Corporation's Chief Financial Officer shall serve, ex officio, as the Treasurer. The Chief Financial Officer shall be appointed by the President and shall serve at the pleasure of the President. The opinion of the URMCO CFO regarding the performance evaluation of the Chief Financial Officer shall be sought and considered by the President during any evaluation of the individual holding this position. Notwithstanding the foregoing, the President shall retain sole authority to hire and fire the Chief Financial Officer of the Corporation.

(c) The positions of the President and Treasurer shall be held by different persons. In no event shall these same persons hold positions described in Article IV, Section 1 above except as provided in Article IV, Section 1(c) and Article IV, Section 3(b), above,

Section 4. Chair of the Board

The Chair shall preside at all meetings of the board, shall be an ex officio voting member of all committees of the board except as otherwise specified in these Bylaws, applicable law, or the resolution creating the committee, shall appoint members of the board to all committees and shall designate the Chair and Vice Chair thereof except when a provision of these bylaws or a board resolution creating the committee provides otherwise, and may execute, in the name of the Corporation, all contracts and applications authorized by the board or necessary and incidental to the carrying out of the business of the Corporation.

Section 5. Vice Chair of the Board

The Vice Chair of the Board shall act as Chair in the absence of the Chair in all matters including but not limited to attendance at all meetings of the board and the committees, and when so acting, shall have the power and authority of the Chair, provided however the Vice Chair shall not have the right to appoint members to standing committees or to designate committee chairs or vice chairs.

Section 6. President

The President shall be the Chief Executive Officer of the Corporation. The President shall have all authority and responsibility necessary to operate the Corporation in all its activities and departments, subject only to these bylaws and to such policies and directives as may be issued by the Board or its Executive Committee. The President shall be an ex officio member with a right to vote on all committees of the Board except as otherwise specified in these Bylaws, applicable law, or the resolution creating the committee. The President shall act as the duly authorized representative of the board and the Corporation in all matters in which the board has not formally designated some other person to act. The President shall report as directed to the Chair between

board meetings and to the board and the Executive Committee of the Board at each meeting of each of those bodies. The President, together with the Treasurer, shall cause the required reports to be made at the Annual Meeting. The President shall sign any deeds, mortgages, bonds, contracts or other instruments which the board has authority to execute except in cases where the execution shall have been expressly delegated by board resolution or these bylaws, or by statute, to some other officer or agent of the Corporation. The President shall select the Corporation's non-Board corporate officers and senior executive staff, following consultation with the URMV Vice President. The approval of the URMV CEO and the URMV VP will be sought regarding the performance evaluation, annual performance goals and objectives, and the terms of the contract of the President during the annual Board evaluation of such individual.

Section 7. Secretary

The Secretary shall keep the minutes of all meetings of the Board of Trustees and of all committees when asked to do so, in books provided for such purpose; and the Secretary shall attend to the giving and serving of all notices of meetings. The Secretary may sign in the name of the Corporation all documents authorized by the Board of Trustees, by specific or general resolution, and affix the seal to all instruments requiring the same, and shall in general perform all duties incidental to the office of Secretary, subject, however, at all times to the direction of the Board of Trustees.

Section 8. Treasurer and Chief Financial Officer

(a) The Chief Financial Officer of the Corporation shall serve as the Treasurer. The Treasurer shall have responsibility for the financial records of the Corporation and shall have general supervision over all its finances. Actual custody and maintenance of these records will be entrusted to competent personnel who will make available to the Treasurer and the board financial reports and other relevant data on the day-to-day operation of the Corporation.

(b) The Treasurer shall render to the President and to the board, whenever requested, an account of the financial condition of the Corporation and shall be responsible for ensuring that proper controls (in accord with applicable provisions of the law and regulations) are established over all assets and funds.

(c) The Treasurer shall endorse on behalf of the Corporation all checks, notes or other obligations and shall deposit the same to the credit of the Corporation in such banks or depositories as the Board of Trustees may designate. Checks, drafts, bills and orders for the payment of monies shall be signed by the Treasurer and/or such authorized representatives as the Board of Trustees may designate for authorization of payment. The Treasurer, or such other Officer as may be designated by the Board of Trustees, shall sign the notes of the Corporation.

(d) Books of account shall be kept, under the general supervision of the Treasurer, in which shall be entered full and accurate accounts of all monies received and paid on account of the Corporation; the Treasurer shall at all reasonable times exhibit his/her books and accounts to any officer of the Corporation or member of the Board of Trustees, upon application, at the office of the Corporation during business hours; and he/she shall perform all acts incidental to the office of Treasurer, subject, however, to the direction of the Board of Trustees.

(e) The Treasurer shall ensure that an independent auditor is appointed annually and that a report is submitted to and reviewed by the Board.

(f) The Treasurer shall make a report at the Annual Meeting concerning all assets of the Corporation received by gift, grant, bequest or devise or otherwise received in trust for the Corporation's purposes.

Section 9. Other Officers

Any other Officers, whose positions may be created by the board and who may be elected by the board from time to time, shall perform such duties as may be designated specifically or generally in the authorizing resolution of the board.

Section 10. Removal of Officers

Any officer elected or appointed by the board may be removed by the board with or without cause.

ARTICLE V

TRUSTEES AND OFFICERS

Section 1. Duty

(a) Trustees and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men and women would exercise under similar circumstances in like positions.

(b) In discharging their duties, Trustees and officers, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the President or the officer of the Corporation having charge of its books of accounts, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such Corporation.

Section 2. Indemnification

(a) In each specific case and to the full extent permitted by the laws of New York, the Corporation shall indemnify any person made, or threatened to be made, a party to any action (including one by or in the right of the Corporation to procure a judgment in its favor), whether civil or criminal, by reason of the fact that he/she, his/her testator or intestate, is or was a Trustee or officer of the Corporation, or of any other corporation, domestic or foreign, which he/she served in any capacity at the request of the Corporation, against the reasonable expenses (including attorneys' fees, judgments, fines and amounts paid in settlement), actually incurred by him/her in connection with the defense of such action, or in connection with an appeal therein, if such Trustee or officer did not breach his/her duty or acted in good faith for the purpose which he/she reasonably believed to be in the best interests of the Corporation (whichever standard is applicable) and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his/her conduct was unlawful.

(b) To the extent permitted by law, expenses in defense of such actions or proceedings shall be paid in advance of final disposition of such action or proceeding.

(c) Except when making any payments pursuant to an order by a court of competent jurisdiction, the board shall first authorize the Corporation to make payments in specific cases in accord with the applicable statutory requirements.

Section 3. Insurance

The Corporation shall procure and maintain full and adequate insurance, with one or more responsible insurance companies, against liability for itself, its Trustees and its Officers, arising out of any suit or claim for damages of whatever nature or basis.

Section 4. Loans

No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its Trustees or other officers, or to any other corporation, firm, association or other entity in which one or more of the Trustees or officers are Trustees, Trustees or officers or hold a substantial financial interest, except a loan to another charitable corporation. A loan made in violation of this section shall be a violation of the duty to the Corporation of the Trustees or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

Section 5. Fidelity Bonds

The Treasurer, President, Chair of the Finance Committee, and all employees of the Corporation who handle or have access to the funds or accounting records shall be bonded, at the Corporation's expense, in such sum and in such form as shall be required by the Board of Trustees.

ARTICLE VI

MEETINGS OF THE BOARD OF TRUSTEES

Section 1. Annual Meeting

(a) The Annual Meeting of the Board of Trustees of the Corporation shall be held within 120 days of January 1st, or, unless otherwise specified, at the regular board meeting next preceding the Annual Meeting.

(b) At the Annual Meeting, the annual reports of the Corporation shall be presented and officers of the Corporation shall be elected or appointed.

(c) At the Annual Meeting, the board may conduct any business, regular or special, except for matters for which a special required notice has not been given.

Section 2. Regular Meetings

(a) The Board shall hold regular meetings at convenient times and locations designated by the Board. Notice of all regular meetings shall be given in accordance with Section 5.

(b) At Regular Meetings, the board may conduct any business for which no special notice is required by these bylaws or by statute.

Section 3. Special Meetings

(a) Special Meetings of the Board of Trustees may be called at any time by the Chair of the Board or by the Secretary upon the request of the Chair or upon the written request of at least five (5) Trustees.

(b) At a Special Meeting, the board shall transact only such business as shall be set forth in the Notice of meeting.

Section 4. Place of Board Meetings

The Board may hold its meetings at the office of the Corporation or at such other places within the State of New York as it may from time to time determine.

Section 5. Notice of Meetings

(a) Each Trustee shall receive not less than twenty-four (24) hours' notice of any meeting either in writing or by telephone. For such purpose, written notice shall be deemed to have been given if sent by ordinary mail or email, addressed to a Trustee at the last designated address on record with the Secretary at least three (3) business days before the date scheduled for the meeting. If mailed, such notice is given when deposited in the United States mail, directed to the Trustee's address as it appears on the records of the Corporation or such other address designated in writing by the Trustee to the Secretary. If mailed electronically, notice is given when directed to the Trustee's electronic mail address as it appears in the records of the Corporation or such other fax number or electronic mail address designated in writing by the Trustee to the Secretary. Notwithstanding the foregoing, a notice shall not be deemed to have been given electronically (1) if the Corporation is unable to deliver two consecutive notices to the Trustee by facsimile or electronic mail; or (2) the Corporation otherwise becomes aware that notice cannot be delivered to the Trustee by facsimile or electronic mail.

(b) Except as specified, the notice of meeting shall be given by the Secretary, and for a special meeting, such notice shall contain a brief but clear statement of the purpose of the meeting.

(c) No notice shall be required to a Trustee who submits a signed waiver or notice either before or after a meeting, or who attends a meeting without protesting, prior thereto or at its commencement, the lack of notice to them.

Section 6. Quorum

Except as provided by statute or elsewhere in these bylaws, for any action described in Section 10 below (relating to Class Voting), quorum shall mean a majority of the entire Board, provided that at least a majority of the URM Trusts are present, and a majority of the Community Trustees then in office are present. For all other actions, quorum shall be a majority of the entire Board, provided that at least one URM Trust is present.

Section 7. Action Without a Meeting

Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if all members of the board consent in writing to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Trustee by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, electronic or facsimile signature. If electronic, the transmission of the consent must be sent by email and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Trustee. The resolution and the written consents thereto shall be filed with the minutes of the proceedings of the board.

Section 8. Participation by Conference Telephone

A Trustee may participate in any meeting of the board by means of a conference telephone, electronic video screen communication or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and each Trustee can participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board. Participation by such means shall constitute presence in person at a meeting.

Section 9. Required Vote

Except as provided by statute or elsewhere in these bylaws, including, without limitation Article VI, Section 10 below (Class Voting), the vote of a majority of the voting Trustees present at the time of a vote, if a quorum is present at such time, shall be the act of the board. Each Trustee who serves with vote shall be entitled to one (1) vote on each matter properly submitted to the Trustees for action at any meeting of the Board.

Section 10. Class Voting

The following actions are subject to approval by Class Voting, defined as the affirmative vote of (a) the majority of all the members of the URM Trusts, and (b) the majority of the Community Trustees, each as in attendance and entitled to vote at a meeting of the Board of Trustees at which a quorum (as defined in Article VI, Section 6) is present:

- A. approval of strategic plans;
- B. approval of capital and operating budgets;
- C. incurrence of debt which for this purpose shall mean indebtedness that is greater than \$100,000, but it shall not include indebtedness for any expenditure identified in the Corporation's approved operating or capital budgets;
- D. appointment of, and except as set forth in Article VII, Sections 5(b)(3) and (4), annual compensation of the Corporation's President, provided, that, the President of the Corporation employed as of the date of adoption of these Amended and Restated Bylaws (i.e., August 1, 2023) shall continue to serve in such capacity pursuant to any employment contracts in effect on such date;
- E. any amendment to the certificate of incorporation and bylaws of the Corporation;

- F. approval of any formation or dissolution of any Affiliate of the Corporation, or participation by the Corporation in any joint venture arrangements; and
- G. participation of the Corporation in a demonstration project such as bundling arrangements, accountable care organizations and capitated payment plans.

Section 11. Real Property Transactions.

Subject to Article II, Section 7, any purchase of real property by the Corporation or any sale, mortgage, lease, exchange, or other disposition of real property owned by the Corporation must be authorized by a vote of a majority of the Board, provided that if such property does (in the case of a sale, mortgage, lease, exchange or other disposition) or would, upon purchase thereof (in the case of a purchase), constitute all, or substantially all, of the assets of the Corporation, then the vote of two-thirds of the entire Board shall be required or, if there are twenty-one or more Trustees, the vote of a majority of the entire Board will be sufficient.

Section 12. Adjournment of Meetings

A majority of Trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place and notice of the adjournment shall be given to the Trustees who are not present at the time of the adjournment, and, unless such time and place are announced at the meeting, to the other Trustees.

Section 13. Rules Governing Conduct of Meetings

In the conduct of their meetings the board and members shall follow the parliamentary procedures described in the most recent edition of "Robert's Rules of Order", however, failure to adhere to such procedures shall not be considered to invalidate action otherwise taken in compliance with these bylaws.

ARTICLE VII

COMMITTEES

Section 1. General Provisions

(a) By resolution adopted by a majority of the entire board, the board may designate from among its members Standing Committees, each consisting of at least three (3) Trustees and having such authority to act for the board as may be specified in such resolution within statutory limitations. Each Trustee will serve on at least one committee; each standing and special committee of the board shall consist of at least three (3) Trustees.

(b) Unless indicated otherwise in these bylaws, or by resolution establishing a committee, Standing Committee members and chairs will be appointed by the Chair of the Board on an annual basis, subject to approval by the board, and in the case of the Executive Committee, by a majority of the entire board. The UPMC CEO may designate up to two (2) persons to serve as voting members of each Committee; provided that the UPMC CEO's appointees shall always constitute a minority of the members of each committee. Notwithstanding anything to the contrary in these bylaws, the Chair of the Board shall appoint additional members to a committee if necessary in order to maintain the UPMC appointees as a minority of any committee.

Section 2. Committee Authority

(a) Any Standing Committee or Special Committee which includes one (1) or more individuals who are not Trustees of the Corporation is advisory only and may make recommendations to, but may not act on behalf of, the Board of Trustees. A Committee of the Board shall consist of at least three Trustees appointed by the Board, except in the case of any Executive Committee, the members of which shall be appointed by a majority of the entire Board.

(b) Committees shall have such authority as designated in these Bylaws or by resolution of the Board, except that no committee shall have the authority to take the following actions:

- (i) approval of any matter that is subject to Class Voting by the Board of Trustees under Article VI, Section 10 of these Bylaws, except as set forth in Article VII, Sections 5(b)(3 and (4);
- (ii) submission to the Member of any action requiring the Member's approval under the law or these Bylaws;
- (iii) filling of vacancies in the Board of Trustees or any Committee;
- (iv) amendment or repeal of the Bylaws or the adoption of new Bylaws;
- (v) amendment or repeal of any resolution of the Board that by its terms is not so amendable or repealable;
- (vi) election or removal of officers and Trustees;
- (vii) approval of any plan of merger or dissolution;
- (viii) authorization of any sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation;
- (ix) approval of amendments of the Corporation's Certificate of Incorporation; and
- (x) appointment, re-appointment and delineation of privileges of the medical staff (other than temporary appointment),

Section 3. The standing committees of the board are:

- (1) Executive Committee
- (2) Administrative Committee
- (3) Audit & Finance Committee
- (4) Joint Conference Committee
- (5) Nominating Committee
- (6) Properties and Facilities Committee
- (7) Systems Assessment/Improvement Committee
- (8) Credentials Committee
- (9) Community Advisory Committee

(b) The standing committees of the board will meet as described in these bylaws and will report to the board at the next regular meeting of the board, except as otherwise provided.

(c) A majority of an entire committee, if present at any meeting, shall constitute a quorum. For the purpose of determining the presence of a quorum, ex officio members with voting rights shall be counted.

(d) All committees shall keep minutes of their meetings and include copies thereof with their reports to the board.

(e) The provisions for Notice, Place of Meetings, Action Without a Meeting, and Participation by Conference Telephone set forth in Article VI are applicable to committee meetings.

(f) Occasionally, a committee, with the approval of the Board of Trustees, may organize an advisory council to assist it in carrying out its responsibilities. When this is done, the responsibilities of such supplemental group shall be defined in writing so as to clearly show that this supplemental group functions solely at the direction and under the supervision of the Board of Trustees.

Section 4. Executive Committee

(a) Composition

The Executive Committee shall consist of:

- (1) The Chair of the Board who shall be the Chair of the committee.
- (2) The Vice Chair of the Board.
- (3) The President.
- (4) The Secretary, who shall be Secretary for the committee.
- (5) SSMH Medical Staff President.
- (6) GGH Chief of Staff.
- (7) Two members of the board who shall be appointed by the Chair and approved by the Board.
- (8) Two (2) members of the board who shall be appointed by the URMCE CEO; provided that the URMCE CEO's appointees shall constitute a minority of the members of this committee.

(b) Duties and Authority

The Executive Committee shall be a Committee of the Board and shall have the duty and authority to transact all business authorized by board resolution and all routine business of the Corporation between meetings of the board subject to the authority reserved to the board below and provided that any action taken shall not conflict with the existing policies and expressed directions of the board. Any action not so taken in the routine course of business shall require ratification at the regular or special meeting of the board to be binding upon the Corporation. The Executive Committee shall function as the Bylaw Committee conducting periodic review of bylaws and recommending appropriate changes as necessary, in accordance with Article XII. In all events, the Executive Committee will report upon its actions at the next board meeting. Routine action shall be subject to confirmation, revision or alteration by the board,

except that if there be a revision or alteration, the rights of third parties shall not be affected thereby.

(c) Meetings and Reports

The Executive Committee shall meet as necessary between meetings of the Board. The Committee shall keep minutes of each of its meetings, which shall include a record of its activities and business transactions. Said minutes and records shall be presented to the Board at its next regular meeting. The activities of the Executive Committee shall be deemed to have been ratified by the Board following presentation of the Committee's minutes and records, unless the Board adopts a resolution overruling the Committee.

Section 5. Administrative Committee

(a) Composition

The Administrative Committee shall be a Committee of the Board and shall consist of:

- (1) The Chair of the Board who shall be the Chair of the committee.
- (2) The Vice Chair of the Board.
- (3) The Secretary.
- (4) The President.
- (5) One member of the board who shall be appointed by the Chair.
- (6) Two (2) persons who shall be appointed by the UPMC CEO;

provided that the UPMC CEO appointees shall constitute a minority of the members of this committee.

(b) Duties and Authority

(1) To plan and oversee the employee relations program of the Corporation, including authorization of personnel policies and wage and salary administration recommendations prepared by management.

(2) To provide advice and counsel to the hospital administration on matters relating to personnel, employee relations programming and labor relations.

(3) To plan and oversee the Corporation's Executive Compensation Program, annually reviewing the Chief Executive Officer's performance and reviewing and authorizing compensation and benefits for administrative personnel. The approval of the UPMC CEO and UPMC Vice President will be sought regarding the performance evaluation, annual performance goals and objectives, and the terms of the contract of the President of the Corporation during the annual Board evaluation of the President.

(4) To determine, on behalf of the Board, the annual compensation of the President and CEO, provided that, (A) the President and CEO must recuse himself from deliberations and voting related to his compensation, in accordance with and subject to the Conflict of Interest Policy of the Corporation, (B) discussions, deliberations, and voting on the President and CEO's compensation must occur in executive session, (C) all committee members, other than the President and CEO, will be provided all supporting materials and analysis obtained and prepared in connection with the review and determination of the President and CEO's

compensation, and (D) both UPMC Directors who are members of the Administrative Committee must be present and vote in favor of such annual compensation.

(5) To serve as the Pension Committee of the Board to administer the Corporation's pension plan, including amendments to the plan, contract changes and annual contributions in compliance with Internal Revenue Service, ERISA and Department of Labor regulations.

(6) To review, provide counsel to hospital administration and to formulate recommendations regarding hospital-based physician contracts, including arrangements related to physician recruitment to ensure consistency with the system's compliance program which is designed to promote and facilitate adherence to applicable federal and state law, and the program requirements of Medicare, Medicaid and other payors.

(7) To plan and oversee the Corporation's Conflict of Interest Policy, annually reviewing statements completed by individual board members to ensure that the nature and extent of any conflict disclosures are properly documented and communicated to those in positions to convene meetings of the board and its committees.

(c) Meetings and Reports

The Administrative Committee shall meet as necessary or upon call issued by the Chair or the President and shall report to the board or Executive Committee, as appropriate.

Section 6. Audit and Finance Committee

(a) Composition

(1) The Audit and Finance Committee shall be a Committee of the Board and shall consist of at least three (3) members of the Board of Trustees and may include at least one (1) member of the medical staff who is also a Trustee. The Treasurer shall be invited to attend all meetings of the committee, without vote. Two (2) members shall be appointed to serve on the committee by the UPMC CEO; provided that the UPMC appointees shall constitute a minority of the members of this committee; and provided further, that if a UPMC appointee is not an "independent director" as defined under Section 102(a)(21) of the New York State Not-for-Profit Corporation Law, they shall serve without vote with respect to matters governed by Section 712-a of the Not-for-Profit Corporation Law. The President shall serve on the committee, provided that, if the President is not an "independent director" as defined under Section 102(a)(21) of the New York State Not-for-Profit Corporation Law, they shall serve without vote with respect to matters governed by Section 712-a of the New York Not-for-Profit Corporation Law.

(b) Duties and Authority

The Audit and Finance Committee shall have the responsibilities required under Section 712-a of the New York Not-for-Profit Corporation Law, and shall be responsible for the proper management and safeguarding of all corporate funds. Its duties shall include the following:

(1) The monthly review of revenues and expenses with respect to historical and projected performance.

(2) Supervision of the management of endowment funds, pension funds and other investments of the Corporation. It shall have responsibility for assuring that donor-restricted funds are managed in compliance with such bequests. It shall prepare and recommend board policies regarding such investments and shall have the authority to appoint and discharge professional investment managers to achieve the objectives of such investment policies. It shall conduct timely reviews of investment management performance and conduct ongoing evaluation of the appropriateness of board policies regarding investments.

(3) Operates as the Audit Committee of the Board as specified in a written Audit Committee Charter adopted by the Board. The Audit Committee Charter shall be regularly reviewed by the Board and updated as necessary to ensure that vigilant oversight of the hospital's audit function, financial reporting processes, internal controls and corporate compliance activities are achieved.

(4) The responsibility to ensure that the Corporation and related organizations are in compliance with generally accepted accounting principles, federal and state financial regulations as well as sound business practice.

(5) The responsibility to work with other Affiliates in Health System to oversee the Health System's Corporate Compliance Program which is designed to promote and facilitate adherence to applicable federal and state law, and the program requirements of Medicare, Medicaid and other payors.

(6) It shall review and recommend to the Board of Trustees annual operating and capital budgets.

(7) The Audit and Finance Committee will review with the independent auditor the scope and planning of the annual audit prior to the audit's commencement; upon completion of the annual audit, review and discuss with the auditor any material risks and weaknesses in internal controls identified by the auditor, any restrictions on the scope of the auditor's activities or access to restricted information, any significant disagreements between the auditor and management, and the adequacy of the accounting and financial reporting processes of the Corporation and its Affiliates; annually consider the performance and independence of the independent auditor; and report on its activities to the Board.

(c) Meetings and Reports

The Audit and Finance Committee shall meet monthly and shall report its action to the Board of Trustees or Executive Committee at its meeting next succeeding such action.

Section 7. Joint Conference Committee

(a) Composition

The Joint Conference Committee shall be a standing committee and a Committee of the Corporation composed of five (5) members of the Board of Trustees consisting of Vice Chair of the Board of Trustees and four (4) members of the Board of Trustees and five (5) members of the Medical Staff of Geneva General Hospital and Soldiers and Sailors Memorial Hospital, consisting of the Chief of Staff and two (2) Department Chairmen from the Geneva General Hospital Medical Staff appointed by the Chief of Staff and the Soldiers and Sailors

Memorial Hospital Medical Staff President along with one (1) additional member of the Soldiers and Sailors Memorial Hospital Medical Staff appointed by the Medical Staff President, and two (2) persons appointed by the URMH CEO; provided that the URMH CEO appointees shall always constitute a minority of the members of this committee. The Chief Operating Officer and the Chief Nursing Officer shall attend all committee meetings in order to ensure good communications with and appropriate representation of the Nursing Department and other clinical departments. Chairmanship of the Joint Conference Committee shall alternate between the Vice Chair of the Board and either the Geneva General Hospital Chief of Staff or Soldiers and Sailors Memorial Hospital Medical Staff President on an annual basis.

(b) Duties

The Joint Conference Committee shall conduct itself as the Planning Committee of the Board and as a forum for the discussion of matters of hospital policy and practice, especially those pertaining to efficient and effective patient care. The committee shall serve as the official point of contact between the medical staff, administration and the Board of Trustees with major responsibility for maintenance of a positive, productive, medico-administrative liaison. It shall also have the following specific duties:

(1) Review and formulate recommendations concerning the general policy issues relating to hospital-medical staff relationships, accreditation and other matters affecting the hospital and medical staff.

(2) Review and formulate recommendations concerning health planning and legislative matters having an impact on the operation of the hospital, its growth and future development.

(3) Pursue in-house and/or external education programs to inform and orient members to hospital specific or general health care issues related to the role, responsibilities and obligations of the board, medical staff and administration in a hospital setting.

(4) Review, evaluate and formulate recommendations to the Board of Trustees regarding annual capital budgets and/or major capital acquisition of medical equipment related to new services as defined in the New York State Hospital Code or health planning requirements.

(5) Evaluate, prepare and formulate recommendations to the board concerning plans for the hospital including, on an annual basis, review of planning priorities and Strategic Business Plan updates. In its planning capacity, the committee shall also evaluate major programs and projects for the improvement of the hospital and make appropriate recommendations to the Board of Trustees.

(c) Meetings & Reports

The Joint Conference Committee shall meet at least twice each year or more frequently as agreed by the members. Minutes of each meeting shall be prepared and forwarded to the Board of Trustees, as well as the GGH Chief of Staff and the SSMH Medical Staff President for communication with the respective medical staff members.

Section 8. Nominating Committee

(a) The Nominating Committee shall be a Committee of the Corporation and shall consist of at least five (5), but not more than ten (10) Trustees and may include up to two (2) non-Trustees appointed from the communities served by the Corporation. The committee shall be appointed annually by the Chair, subject to the approval of the board except for two (2) members who shall be appointed by the URMCE CEO; provided that the URMCE CEO's appointees shall always constitute a minority of the members of this committee.

(b) The Nominating Committee shall recommend to the Board of Trustees qualified candidates for election as officers to be elected by the Board, and for election to the board by the Member.

(c) The Nominating Committee shall recommend to the Board of Trustees qualified candidates for election to Board of Trustees of corporations for which the Corporation is the sole voting member or for which the Corporation otherwise has the right to elect or appoint Trustees.

(d) In preparing its recommendations, the Nominating Committee shall take into consideration the recommendations of its Affiliates and shall consider candidates who have demonstrated an interest in promoting the health and well-being of the residents of the region and who will provide a socioeconomic, demographic, and geographical balance to the Board of Trustees. The Nominating Committee shall periodically evaluate the composition of the Board, set objectives for new members and evaluate the participation of existing Board members.

(e) The Nominating Committee will meet as needed, and shall report its action to the Board of Trustees or Executive Committee at its meeting next succeeding such action.

Section 9. Properties and Facilities Committee

(a) Composition

The Properties and Facilities Committee shall be a Committee of the Corporation and shall consist of not less than three (3) members of the Board of Trustees. Two (2) persons shall be appointed to the committee by the URMCE CEO; provided that the URMCE CEO appointees shall always constitute a minority of the members of this committee.

(b) Duties

The Properties and Facilities Committee shall be responsible for the oversight of all real properties of the hospital and its related organizations. Its duties shall include the following:

(1) It shall conduct periodic inspections of the physical plant and properties to review new accomplishments, recommend priorities for further improvements and to evaluate the continuing maintenance program of the hospital.

(2) It shall review and report to the board on any major alterations or additions to the physical plant of the hospital which are recommended by hospital management or its architect.

(3) It shall review and report to the board with regard to the acquisition or disposition of real property or facilities.

(4) During times of major construction projects, the committee shall receive and review reports on the progress of the project and transmit them to the board.

(5) It shall provide advice and counsel to hospital administration on other matters relating to its buildings and grounds.

(c) Meetings and Reports

The committee shall meet at least twice a year and report on its activities to the board.

Section 10. Systems Assessment/Improvement Committee

(a) Composition

The Systems Assessment/Improvement Committee shall be a Committee of the Corporation and shall consist of not less than three (3) members of the board, one of whom shall be the Chair of the committee. Additional members of the committee shall include, but not be limited to:

- (1) Chief of Staff (GGH)
- (2) Associate Chief of Staff (GGH)
- (3) President of Medical Staff (SSMH)
- (4) Medical Staff Representative (SSMH)
- (5) President & CEO
- (6) Vice President, Medical Affairs & CMO
- (7) Chief Operating Officer
- (8) Site Administrator (SSMH)
- (9) Chief Nursing Officer
- (10) Director, Quality & Performance Improvement
- (11) Vice President, Long Term Care
- (12) Two (2) members appointed by the URMCE CEO; provided that the

URMC CEO appointees shall always constitute a minority of the members of this committee.

(b) Duties

The committee has the responsibility for supervision of all performance improvement, patient safety and risk management activities of the Corporation. The committee shall provide direction using a multidisciplinary approach to ensure that performance objectives are met.

The committee has the authority and responsibility to:

(1) Establish the Performance Improvement priorities for monitoring and evaluation consistent with the organization's mission, vision and values. Performance Improvement activities will consider high volume, high-risk or problem prone patient populations or clinical/support services.

(2) Identify opportunities to enhance patient/resident care by using evidence-based medicine to increase the probability of desired patient/resident outcomes.

(3) Require each product line or service and the medical staff to participate in a multidisciplinary Performance Improvement program consistent with the organization's Performance Improvement Plan.

(4) Request Performance Improvement, Patient Safety and Risk Management reports/summaries of activities from medical staff, nursing, ancillary, support and long term care, as well as Infection Control and Safety.

(5) Reviews summaries of medical staff peer review activities to assure patient safety, regulatory compliance and to identify opportunities for improvement in the review process as well as potential projects for the Performance Improvement Teams.

(6) Direct the medical staff, hospital and nursing home staff and committees to conduct focused reviews and studies on specified topics as opportunities for improvement in patient/resident care or other systems arise.

(7) Ensure that the medical staff credentialing and reappointment process utilizes relevant Performance Improvement findings.

(8) Evaluate the effectiveness of the hospital's risk management program.

(9) Ensure an ongoing process for credentialing and competency assessment of the Corporation's employees.

(10) Monitor changes in external agencies' regulations, standards and guidelines.

(11) Maintain confidentiality of the Performance Improvement and Patient Safety findings.

(12) Review and recommend modifications to the Performance Improvement and Patient Safety Plan, as necessary.

(13) Serve as the Institutional Review Board (IRB) of the Corporation.

(c) Meetings and Reports

The Systems Assessment/Improvement Committee shall meet as needed, but not less than eight (8) times per year, and shall make regular reports to the Board.

Section 11. Credentials Committee

(a) Composition

The Credentials Committee shall be a Committee of the Corporation and shall consist of not less than three (3) members of the board, the President, two (2) members appointed by the URMCE CEO (provided that the URMCE CEO appointees shall always constitute a minority of the members of this committee), and the following members of the medical staff:

- (1) Committee Chair as provided in the Medical Staff Bylaws
- (2) Chairmen of each clinical department
- (3) Vice President, Medical Affairs & CMO
- (4) Chief of Staff
- (5) Associate Chief of Staff

(b) Duties

The Credentials Committee coordinates the staff credentialing function by receiving and analyzing applications and recommendations for appointment and reappointment, provisional period conclusion or extension, clinical privileges and changes therein and recommending appropriate action.

The committee has the authority and responsibility to:

(1) Integrate relevant P/I findings for use in medical staff credentialing and reappointment.

(2) Review credentials applications for appointment and reappointment by all medical staff, including Adjunct and Allied Health Professional staffs. As an action of the Medical Staff Executive Committee, transmits directly to the Board of Trustees its written report and recommendations as to approval or denial of, and any special limitations on, staff appointment, category of staff membership and prerogatives, department affiliation and scope of clinical privileges, consistent with the Medical Staff Bylaws and Credentialing Procedures Manual.

(c) Meetings and Reports

The Credentials Committee shall meet monthly or more frequently, if necessary, and make regular reports to the Board of Trustees. Credentialing recommendations made to the Board of Trustees shall be the actions of the Credentials Committee and the Medical Staff Executive Committee.

Section 12. Community Advisory Committee

(a) Composition

The Community Advisory Committee shall be a Committee of the Corporation and shall consist of not less than three (3) members of the board, one of whom shall be Chair of the committee. Two (2) members shall be appointed by the URMCE CEO; provided that the URMCE CEO appointees shall always constitute a minority of the members of this committee. Other members of the committee shall include community members who will represent a cross-section of community interests. The Vice President, Community Services shall serve as an ex officio member of the committee, and shall be responsible for selection and appointment of community members to the committee.

(b) Duties

The Community Advisory Committee shall be responsible for overseeing community outreach activities and communication with our various publics in order to foster positive relationships. The committee shall monitor the image of the Corporation and assess customer needs within the communities the Corporation serves.

(c) Meetings and Reports

The Community Advisory Committee shall meet at least two times each year at a time and place established by the committee. The committee shall report to the board or Executive Committee as appropriate.

Section 13. Search Committee

(a) In the event of the resignation, retirement or other termination of the appointment of the President of the Corporation (and if the position is held by the Member's President and CEO), a search committee will be formed to identify qualified candidates to serve as the next President of the Corporation. The search committee will be a Committee of the Corporation, and shall consist of three (3) representatives appointed by the UPMC CEO and up to ten (10) members of the Board selected by the Board.

(b) (b) In the event of the resignation, retirement or other termination of the appointment of the President of the Corporation (if the position is not held by the Member's President and CEO) or individuals in other select executive/leadership positions, a search committee will be formed to identify qualified candidates to serve as the next President of the Corporation, or to fill such other positions. The search committee will be a Committee of the Corporation, and shall include representatives from both the Member and UPMC, as determined by agreement of their respective CEOs.

(c) (c) Candidates for President selected by the search committee formed pursuant to Article VII, Section 13(a) or (b) will be recommended to the Board and any final candidate selected to fill the position of President will be subject to approval by Class Voting as described in Article VI, Section 10.

Section 14. Special Committees

In addition to the Standing Committees there may be Special Committees of the board or of the Corporation which shall have only the powers specifically delegated to them by the board. The Chair of the Board shall appoint the members and Chairs of the Special Committees of the board unless the board indicates otherwise in the resolution authorizing the Special Committee of the board. The UPMC CEO may designate up to two (2) persons to serve as voting members of each special committee; provided that the UPMC appointees shall always constitute a minority of the members of each committee. The members of the Special Committees of the Corporation shall be approved by the board and are not required to be Trustees.

ARTICLE VIII

MEDICAL STAFF

Section 1. Organization

The Medical Staff shall be comprised of physicians and dentists who are graduates of recognized medical, dental or osteopathic schools, and who are duly licensed to practice medicine or dentistry in the State of New York. The Board shall consider recommendations of the Medical Staff and appoint to the Staff, in numbers consistent with the Corporation's objectives and proper patient care, physicians and dentists who meet the qualifications for membership set forth in the

Medical Staff Bylaws. The Board must, in addition, delineate each applicant's clinical privileges at the Corporation.

Section 2. Appointment

All applications for appointment to the Medical Staff shall be in writing and addressed to the Chief Executive Officer of the Corporation. The application shall require detailed information concerning the applicant's education, licensure, professional competence and ethical character, as prescribed more fully in the Medical Staff Bylaws. Each applicant shall be reviewed in accordance with the procedures and criteria set forth in the Bylaws of the Medical Staff.

Section 3. Duties of the Medical Staff

The Medical Staff shall be responsible for the quality of medical care in the Hospital, subject to the ultimate authority of the Board of Trustees. Among the duties of the Medical Staff are:

(a) to assure that all patients admitted to or treated at the Hospital receive high quality health care;

(b) to conduct an ongoing review and evaluation of the quality of each practitioner's professional performance in the Hospital, and to recommend the delineation of clinical privileges of each practitioner at the Hospital based upon such appraisal;

(c) to provide a cooperative professional relationship among the Medical Staff, the Board and the Administration through which issues concerning the Staff and the Hospital may be discussed;

(d) to provide an appropriate educational setting that will maintain scientific standards and that will lead to continuous advancement in professional knowledge and skill;

(e) to establish and maintain high professional and ethical standards;

(f) as more fully set forth in Section 4 of this Article, to develop and maintain bylaws, rules and regulations for the appointment, reappointment, delineation of privileges and self-government of the Staff;

(g) to make recommendations to the Board of Trustees concerning: appointments, reappointments and other changes in Staff status, pursuant to defined, written criteria;

(1) granting of clinical privileges;

(2) disciplinary action;

(3) all matters relating to professional competency;

(4) such specific matters as may be referred to the Staff by the Board

of Trustees.

Section 4. Bylaws of the Medical Staff

The Medical Staff shall adopt bylaws, rules and regulations, and periodic amendments thereto as necessary, which set forth its organization and function, and which are consistent with

the bylaws, policies and objectives of the Board of Trustees and with applicable legal and regulatory requirements. Medical Staff bylaws, rules and regulations shall be subject to, and effective upon, approval by the Board of Trustees, and the Board's authority to adopt or amend such bylaws, rules and regulations shall not be dependent upon ratification by the Medical Staff. All members of the Medical Staff shall subscribe to and agree to be governed by all the bylaws, rules, regulations and policies of the Medical Staff and the Corporation and the requirements and ethical standards established by the medical specialty to which the physician belongs.

All appointments and granting of privileges to the medical staff shall be for two (2) years only, renewable only on recommendation of the medical staff upon re-application. When the application for any person for initial appointment to the Medical Staff is rejected, or when an appointment is not renewed, or when privileges have been or are proposed to be reduced, altered, suspended or terminated, the applicant or Medical Staff member shall be afforded an opportunity for a hearing and appellate review before the appropriate bodies, whose recommendations shall be considered by the Board prior to taking final action. Such hearings shall be conducted in accordance with procedures adopted by the Board consistent with those set forth in the Medical Staff Bylaws, so as to ensure due process and to afford full opportunity for the presentation of all pertinent information. The Board shall have final authority in making Medical Staff appointments and reappointments, and in granting clinical privileges to Medical Staff members.

Each member of the Medical Staff shall have appropriate authority and responsibility for the care of his patients, subject to such limitations as are contained in these bylaws, rules and regulations of the Medical Staff, and subject to any limitations attached to the practitioner's appointment.

Section 5. Vice President, Medical Affairs & Chief Medical Officer

(a) There shall be a Vice President, Medical Affairs & Chief Medical Officer (CMO) appointed by the Board of Trustees in consultation with the medical staff. The Vice President, Medical Affairs & CMO shall be qualified for membership on the medical staff and demonstrate an interest and capability in hospital/medical staff leadership roles. As a member of the medical staff in an administrative position, the Vice President, Medical Affairs & CMO may also have clinical responsibilities in his/her clinical specialty by applying for these privileges in accordance with the Medical Staff Bylaws.

(b) The Vice President, Medical Affairs & CMO shall be responsible for the organization and conduct of the medical staff as defined in the Medical Staff Bylaws, pertinent State Hospital Code provisions and a written job description developed in consultation with the medical staff.

(c) The Vice President, Medical Affairs & CMO shall be invited to attend all meetings of the Board of Trustees, without vote, and shall serve as a member of the Medical Staff and all medical staff committees.

ARTICLE IX

AUXILIARY

Section 1.

The Board of Trustees recognizes the need for a hospital auxiliary.

Section 2.

The function and purpose of the auxiliary shall be to promote and to advance the welfare of Geneva General Hospital through ways approved by the Board of Trustees of the hospital. The auxiliary may perform patient-related services within or outside of the hospital, conduct fund raising activities, conduct community service projects, enter into contracts as approved by the hospital's Board of Trustees or President, and carry on such other activities necessary to accomplish its purposes as approved by the Board of Trustees or President.

Section 3.

The auxiliary may establish bank accounts, by resolution of the auxiliary's Executive Committee (and countersigned by the hospital President or designee). Funds disbursed for the benefit of the hospital must have prior approval of the hospital President.

Section 4.

The auxiliary shall file annually with the Board of Trustees a financial statement and a report of the organization's activities during the past year.

Section 5.

The bylaws of the auxiliary and any amendments thereto shall be approved by the Board of Trustees.

ARTICLE X

CODE OF ETHICS

Section 1.

Trustees, officers and management employees shall exercise the utmost good faith in all transactions touching upon their duties to the Corporation and its property. In their dealings with and on behalf of the Corporation, they are held to a strict rule of honesty and fair dealing between themselves and the Corporation. They shall not use their positions, or knowledge gained therefrom, so that a conflict might arise between the Corporation's interest and that of the individual.

Section 2.

All acts of Trustees, officers and management employees shall be for the sole benefit of the Corporation in any dealing which may affect it adversely. They should avoid, directly or indirectly, participating in any arrangement, agreement, investment or other activity which could result in personal benefit at the expense of the Corporation's interest.

Section 3.

No Trustee, officer or management employee shall accept any favor which might influence their official act or which might reflect upon his/her business conduct.

Section 4.

Officers and management employees shall avoid outside employment or activity which involves obligations which may compete with or be in conflict with the interests of the Corporation.

Section 5.

A full disclosure of all facts of any transaction or relationship which is subject to any doubt shall be made to the President of the Corporation at any time that a conflict arises.

Section 6.

The President shall, at the meeting of the Board of Trustees immediately following the receipt of facts concerning any transaction or relationship which shall constitute or indicate a conflict of interest, report the same to the Chair of the Board of Trustees for such action as the President shall deem appropriate or required by the not-for-profit corporation laws of the state of New York.

Section 7.

A copy of this Code of Ethics and the Conflict of Interest Policy, shall be given to each new Trustee upon their election to the Board of Trustees.

ARTICLE XI

STANDARDS

The corporation shall be operated in accordance with all Federal, State and local laws and shall be guided by the recommendations of the American Hospital Association and The Joint Commission and the Hospital Code of the State of New York.

[Continued on next page]

ARTICLE XII

AMENDMENTS

These bylaws may be amended, modified or repealed, in whole or in part, only by the affirmative vote of the Board of Trustees pursuant to Class Voting as described in Article VI, Section 10, and approval of the Member

ARTICLE XIII

FISCAL YEAR

The fiscal year of the Corporation shall begin on the 1st of January and end on the 31st day of December in each year.

ARTICLE XIV

CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal, New York." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Prepared: January 19, 1984
Adopted: March 23, 1984
Amended: November 17, 1994
Amended: November 20, 1997
Effective: February 2, 1998
Amended: March 25, 1998
Amended: May 27, 1998
Amended: March 28, 2001
Amended: April 28, 2004
Approved: November 17, 2010
Amended: November 13, 2019
Amended: November 24, 2020
Amended and Restated:
August 1, 2023



Secretary, Board of Trustees

GENEVA GENERAL HOSPITAL

SECRETARY'S CERTIFICATE

August 1, 2023


This Certificate (this "Certificate") is furnished to University of Rochester ("UR") and University of Rochester Medical Center ("URMC"), pursuant to Section 12.3.2 of that certain Master Alignment Agreement, dated as of April 14, 2022 among UR and URMC, and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"), Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva – North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva – South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), dba Finger Lakes Health College of Nursing and Health Sciences, and the Finger Lakes Health Foundation, Inc. ("FLHF") (as amended from time to time, the "Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

The undersigned, being the duly elected or appointed and qualified Secretary of GGH, does hereby certify, on behalf of GGH, and not in their individual capacity, as follows:

1. Attached hereto as Exhibits A and B are true, correct and complete copies of resolutions (the "Resolutions") duly adopted by the Board of Directors of GGH, duly authorizing the making, execution and delivery of the Agreement, and the consummation of the transactions contemplated thereby including but not limited to the adoption of the Restated Certificate of Incorporation as well as the Amended and Restated Bylaws, effective upon Closing. Such resolutions are in full force and effect on the date hereof and have not been altered, amended, modified or rescinded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written above.


Name: Rev. Jim Adams
Title: Secretary

(Signature Page to Secretary's Certificate (GGH))

Exhibit A

**RESOLUTIONS
OF THE
BOARD OF TRUSTEES OF
GENEVA GENERAL HOSPITAL**

WHEREAS, a draft Master Alignment Agreement ("Master Alignment Agreement"), by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), Finger Lakes Health College of Nursing & Health Sciences ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF"), has been presented to the Board of Trustees (the "Board") of Geneva General Hospital (also referred to herein as the "Corporation"); and

WHEREAS, each of GGH and SSMH have previously entered into a Management Services Agreement with URMC, dated as of October, 1, 2020, and approved by the NYS Department of Health on October 19, 2020, and Board wishes to further integrate and strengthen their clinical service offerings through a formal alignment ("Alignment"); and

WHEREAS, URMC and the Board believe that the Alignment will enable URMC to establish new clinical programs to offer additional specialty services at GGH and to provide operational assistance and cost savings to GGH, SSMH and other clinical affiliates of FLH; and

WHEREAS, the Board seeks to improve the efficiency of the Corporation's and other clinical affiliates of FLH's services, reduce their costs, increase their access to capital and achieve certain other goals and objectives set forth in the Agreement;

WHEREAS, the members of the Board of Trustees, acting on behalf of the Corporation, find it in the best interests of the Corporation to adopt the following resolutions.

RESOLVED, that the Corporation shall enter into a Master Alignment Agreement (the "Master Alignment Agreement"), substantially in the form presented to the Board today, providing for the affiliation of the Corporation and each FLH affiliate with the University of Rochester ("UR") and the University of Rochester Medical Center ("URMC"), pursuant to which UR shall become the sole member of FLH; FLH shall remain the sole member of GGH,

SSMH, LCG-N, LCG-S, HLC, TB-HDFC, GG-HDFC and FLHF; SSMH shall remain the sole shareholder of SVI; a physician designated by GGH shall remain the sole shareholder of FLM; and GGH shall remain the sole member of FLHCN; and be it further

RESOLVED, as sole member of FLH, UR shall have all the rights and authority of members under the New York Not-for-Profit Corporation Law and common law except as specifically limited by the Master Alignment Agreement, and certain powers shall be reserved to UR and FLH, as set forth in the Master Alignment Agreement; and

RESOLVED, that, pursuant to the Master Alignment Agreement, each FLH affiliate with a board consisting of the same individuals as the FLH Board (the "Mirror Board Entities") shall cause to be appointed three (3) individuals appointed by UR, which number shall increase proportionately if the size of such board increases, as voting members (the "URMC Class of Directors"); and each FLH affiliate with a board consisting of individuals who are not the same individuals and the FLH Board (the "Non-Mirror Board Entities") shall cause to be appointed one (1) voting member to be appointed by the URMC CEO; and the URMC CEO shall have the right to appoint two (2) voting members to each committee of a Mirror Board Entity; and

RESOLVED, the current terms of the FLH Directors shall be extended for three (3) additional years, and UR shall not have the right to remove any FLH Director for five (5) years; and

RESOLVED, that certain Board actions will require the approval of the URMC Class of Directors, certain actions will be reserved to FLH with respect to the Non-Mirror Board Entities, as described in the Master Alignment Agreement, and UR, as the sole member of FLH, shall have certain reserved powers with respect to FLH and FLH's Affiliates; and

RESOLVED, that the Certificate of Incorporation and Bylaws of the Corporation be amended to reflect all of the foregoing changes, as described in the Master Alignment Agreement; and

RESOLVED, that, the closing of the transactions contemplated by the Master Alignment Agreement are subject to satisfactory due diligence review by the parties thereto, and certain other conditions; and

RESOLVED, that, subject to receipt of all necessary regulatory approvals, the President & CEO or other appropriate officers of the Corporation be, and hereby are, authorized, empowered and directed, without any further action of this Board, in the name and on behalf of the Corporation, to negotiate and approve, execute and deliver, and/or acknowledge and consent to, as the case may be, a Master Alignment Agreement to be entered into by and between the parties set forth in the first paragraph hereof, containing terms and conditions presented to the meeting, with such change or changes therein, or amendments thereto, as the officer executing the same on behalf of the Corporation shall, upon consultation with counsel, approve, the execution thereof with such change or changes to be conclusive evidence of the authority therefore; and be it further

RESOLVED, that the President & CEO or other appropriate officers of the Corporation be, and hereby are, authorized, empowered and directed, in the name and on behalf of the

Corporation, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer or Trustee of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of: December 22, 2021 Board of Trustees

Exhibit B

RESOLUTIONS

OF THE

BOARD OF TRUSTEES OF

GENEVA GENERAL HOSPITAL

WHEREAS, Geneva General Hospital (the "Corporation") entered into the Master Alignment Agreement ("Master Alignment Agreement"), dated April 14, 2022, by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF"), pursuant to which the parties thereto have agreed to create a single, multiple corporation system (the "Alignment"); and

WHEREAS, per the Master Alignment Agreement, to effect the Alignment, the Corporation shall adopt amended and restated bylaws as well as an amended and restated certificate of incorporation, which, among other things, make changes to the governance and structure of the Corporation as are specifically described in the Master Alignment Agreement;

WHEREAS, FLH and URMC have agreed that the closing of the transactions contemplated by the Master Alignment Agreement (the "Closing") shall occur, and the Alignment shall be effective, on August 1, 2023; and

WHEREAS, FLH is the sole member of the Corporation, and as such has the power to approve amendments of the Corporation's certificate of incorporation and bylaws; and

WHEREAS, the Corporation's management and legal counsel have presented amended and restated bylaws as required to effect the Alignment, as well as other changes that are recommended as necessary or appropriate, forms of which have been presented to the Board today and are attached as Exhibit A hereto; and

WHEREAS, the Corporation's management and legal counsel have presented an amended and restated certificate of incorporation for purposes of the Alignment, a form of which have been presented to the Board today and is attached as Exhibit B hereto; and it is hereby

RESOLVED, that, to effectuate the transactions contemplated by the Master Alignment Agreement, and to make other changes as have been recommended by management as necessary or appropriate, the Board of Trustees of the Corporation, hereby approves the adoption of the amended and restated bylaws set forth in Exhibit A hereto, subject to corrections consistent with alignment and/or typographical issues as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, and recommends them to FLH as the sole corporate member of the Corporation for approval, to become effective on August 1, 2023; and be it further

RESOLVED, that, the Board of Trustees hereby approves the adoption of the amended and restated certificate of incorporation set forth in Exhibit B hereto, subject to such changes as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, including as may be requested by any third party with the authority to approve amendments to the Corporation's certificate of incorporation, including but not limited to state or federal regulators; authorizes the President of the Corporation to execute the restated certificate of incorporation and to file it promptly upon receipt of any required third party approvals; and recommends it to FLH as the sole corporate member of the Corporation for approval; and be it further

RESOLVED, that the resignation of Jason Feinberg, MD, from the Board of Trustees of the Corporation effective July 26, 2023, is hereby accepted; and be it further

RESOLVED; that the position of Vice President, Medical Affairs and CMO be, and it hereby is, eliminated as an ex officio member of the Board of the Corporation, effective upon the effective date of the amended and restated bylaws referred to herein; and be it further

RESOLVED, that, if the Closing does not occur for any reason, the changes to the certificate of incorporation and bylaws described in the foregoing resolution shall be deemed to not have been adopted, and shall be of no force and effect; and be it further

RESOLVED, that the President & CEO of the Corporation be, and hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of: July 26, 2023

[EXHIBITS OMITTED FROM CERTIFICATE]

UNIVERSITY OF ROCHESTER

SECRETARY'S CERTIFICATE

August 1, 2023

This Secretary's Certificate (this "Certificate") is furnished to Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), pursuant to Section 12.2.1 of that certain Master Alignment Agreement, dated as of April 14, 2022, by and between University of Rochester ("UR") and University of Rochester Medical Center ("URMC"), and FLH, Geneva General Hospital ("GGH"), Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva – North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva – South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing, dba Finger Lakes Health College of Nursing and Health Sciences ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF") (as amended from time to time, the "Agreement"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

The undersigned, in their capacity as the Secretary of UR and not in their individual capacity, hereby certifies as follows:

1. Attached hereto as **Exhibit A** and **Exhibit B** are true, correct, and complete copies of resolutions of the Board of Trustees of UR authorizing the making, execution and delivery of the Agreement and consummation of the transactions contemplated thereby. Such resolutions are in full force and effect on the date hereof and have not been altered, amended, modified or rescinded.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written above.

UNIVERSITY OF ROCHESTER

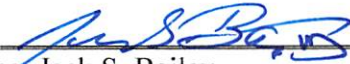
By: 
Name: Jack S. Bailey
Title: Secretary

EXHIBIT A

**Resolutions of the Board of Trustees of University of Rochester Approving the Master
Alignment Agreement**



Board of Trustees
Executive Committee Teleconference Meeting
November 18, 2021
Agenda Item No. 3. b.
Approval of Affiliation with Finger Lakes Regional Health System, Inc.

RESOLVED

That the Executive Committee of the Board of Trustees hereby approves affiliation with Finger Lakes Regional Health System, Inc. d/b/a Finger Lakes Health (“Finger Lakes Health”), a parent company with the following wholly controlled subsidiaries (“affiliates”): Geneva General Hospital; Soldiers and Sailors Memorial Hospital of Yates County; Geneva Nursing Home II, Inc. d/b/a Living Center at Geneva – North; Geneva Nursing Home, Inc. d/b/a Living Center at Geneva – South; Huntington Nursing Home, Inc. d/b/a Huntington Living Center; Taylor-Brown Housing Development Fund Company, Inc.; Geneva General Housing Development Fund Company, Inc.; Soldiers Ventures, Inc.; FLH Medical, P.C.; Finger Lakes Health College of Nursing; and Finger Lakes Health Foundation, Inc., whereby the University will become the sole corporate member of Finger Lakes Health.

AND FURTHER RESOLVED

That the Executive Committee of the Board of Trustees hereby delegates authority to the University of Rochester Medical Center, acting through its Chief Financial Officer, who has preliminarily determined that the fair market value of the assets of Finger Lakes Health exceeds the \$92 million threshold requiring a Hart-Scott Rodino premerger notification, to make the final good-faith determination of the fair market value of the assets of Finger Lakes Health as required under federal regulations for purposes of filing a premerger notification under the Hart-Scott-Rodino Act, 16 CFR § 801.10(c)(3).

AND FURTHER RESOLVED

That the Executive Committee of the Board of Trustees hereby authorizes the Officers of the University and the Officers of the University of Rochester Medical Center, upon approval of the President, to take such actions and execute such documents as they may determine necessary and appropriate to effectuate these transactions.

AND FURTHER RESOLVED

That the Executive Committee of the Board of Trustees hereby authorizes the Senior Vice President for Health Sciences/Medical Center Chief Executive Officer to take membership actions on behalf of the University with respect to Finger Lakes Health and its affiliates.

PROVIDED THAT:

- Any material terms of the Master Alignment Agreement as presented to the Executive Committee that are changed before execution shall be approved by the President, with advice from the Chief Financial Officer of the University and the General Counsel of the University, as being in the best interests of the University and the University of Rochester Medical Center; and
- Any new information that becomes known to the President, the Chief Financial Officer of

the University, the Senior Vice President for Health Sciences/Medical Center Chief Financial Officer, and the General Counsel of the University, including but not limited to the results of due diligence regarding the transaction, prior to closing the transaction pursuant to the Master Alignment Agreement, does not present a material concern such that the President concludes that proceeding with the affiliation is unwise; and

- The President, on advice of the Chief Financial Officer of the University and the General Counsel of the University, shall report back to the Board of Trustees or its Executive Committee with respect to any material due diligence results received after this approval but prior to closing the transaction.

EXHIBIT B

**Resolutions of the Board of Trustees of University of Rochester Approving the Amendment
to the UPMC Bylaws**



**Board of Trustees
Special Executive Committee Meeting
July 31, 2023
Agenda Item No. 02.c
Approval of Bylaws Amendments
And**

Appointments to the University of Rochester Medical Center Board

RESOLVED

Upon recommendation of the Nominations and Board Practices Committee of the Medical Center Board, and the Medical Center Board Executive Committee the following amendments to the University of Rochester Medical Center Board are approved, and recommended to the University of Rochester Board of Trustees for approval, effective as of the date of closing the affiliation of Finger Lakes Regional Health System, Inc. with the University of Rochester:

ARTICLE V: MEMBERSHIP

A. Composition

- 1) The Board shall be comprised of not more than forty (40) public members. In no event shall there be fewer than five (5) Trustee members, which members may be Senior or Life Trustees of the University.
- 2) Of the forty (40) public members, three (3) of the seats on the Board shall be filled by candidates nominated by the Nominating Committee of the Board of Directors of F.F. Thompson Health System, Inc., and three (3) of the seats on the Board shall be filled by candidates nominated by the Nominating Committee of the Board of Directors of Finger Lakes Regional Health System, Inc.

ARTICLE X: BOARD REMOVAL AND VACANCIES

Members of the Board may be removed from office, with or without cause, by the Board of Trustees. If a vacancy occurs on the Board, the Nominations and Board Practices Committee may recommend a replacement for the unexpired term to the Board of Trustees; provided that if a seat filled by a nominee of the Nominating Committee of the Board of Directors of F.F. Thompson Health System, Inc. becomes vacant, the vacancy shall be filled by an individual nominated by the Nominating Committee of the Board of Directors of F.F. Thompson Health System, Inc.; and- provided further that if a seat filled by a nominee of the Nominating Committee of the Board of Directors of Finger Lakes Regional Health System, Inc. becomes vacant, the vacancy shall be filled by an individual nominated by the Nominating Committee of the Board of Directors of Finger Lakes Regional Health System, Inc.

AND FURTHER RESOLVED

Upon recommendation of the Nominations and Board Practices Committee of the Medical Center Board, and the Medical Center Board Executive Committee the following nominees submitted by the Board of Directors of Finger Lakes Regional Health System, Inc. following nomination by its Nominating Committee are approved for appointment to the Medical Center Board, and recommended to the University of Rochester Board of Trustees for approval, effective as of the date of closing the affiliation of Finger Lakes Regional Health System, Inc. with the University of Rochester:

Philip G. Beckley
Menzo D. Case
Ryan M. Hallings

EXPLANATION

Pursuant to the Master Alignment Agreement between the University of Rochester Medical Center and Finger Lakes Regional Health System, Inc. ("Finger Lakes Health") dated April 14, 2022, it was agreed that effective as of the closing date of the affiliation of Finger Lakes Health with the University of Rochester, the University of Rochester Medical Center Board would include three representatives of Finger Lakes Health nominated by the Nominating Committee of the Finger Lakes Health and approved by its Board of Directors, subject to approval by the University of Rochester Board of Trustees.

The proposed amendments to the Bylaws implement this provision.

At their meeting conducted via electronic review on June 16, 2023 the University of Rochester Medical Center Board Nominations Committee approved the following amendments to the University of Rochester Medical Center Board are approved, and recommended to the University of Rochester Board of Trustees for approval, effective as of the date of closing the affiliation of Finger Lakes Regional Health System, Inc. with the University of Rochester.

At their meeting on June 26, 2023, the University of Rochester Medical Center Board Executive Committee approved the following amendments to the University of Rochester Medical Center Board are approved, and recommended to the University of Rochester Board of Trustees for approval, effective as of the date of closing the affiliation of Finger Lakes Regional Health System, Inc. with the University of Rochester:

**FINGER LAKES REGIONAL HEALTH SYSEM, INC.,
DBA FINGER LAKES HEALTH**

SECRETARY'S CERTIFICATE

August 1, 2023

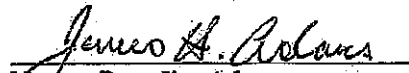
This Certificate (this "Certificate") is furnished to University of Rochester ("UR") and University of Rochester Medical Center ("URMC"), pursuant to Section 12.3.2 of that certain Master Alignment Agreement, dated as of April 14, 2022 among UR and URMC, and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"), Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva – North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva – South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), dba Finger Lakes Health College of Nursing and Health Sciences, and the Finger Lakes Health Foundation, Inc. ("FLHF") (as amended from time to time, the "Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

The undersigned, being the duly elected or appointed and qualified Secretary of FLH, does hereby certify, on behalf of FLH, and not in their individual capacity, as follows:

1. Attached hereto as Exhibits A and B are true, correct and complete copies of resolutions (the "Resolutions") duly adopted by the Board of Directors of FLH, duly authorizing the making, execution and delivery of the Agreement, and the consummation of the transactions contemplated thereby including but not limited to the adoption of the Restated Certificate of Incorporation as well as the Amended and Restated Bylaws, effective upon Closing. Such resolutions are in full force and effect on the date hereof and have not been altered, amended, modified or rescinded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written above.


Name: Rev. Jim Adams
Title: Secretary

(Signature Page to Secretary's Certificate (FLH))

Exhibit A

**RESOLUTIONS
OF THE
BOARD OF DIRECTORS OF
FINGER LAKES REGIONAL HEALTH SYSTEM, INC.
DBA FINGER LAKES HEALTH**

WHEREAS, a draft Master Alignment Agreement ("Master Alignment Agreement"), by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), Finger Lakes Health College of Nursing & Health Sciences ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF"), has been presented to the Board of Directors (the "Board") of Finger Lakes Regional Health System, Inc. dba Finger Lakes Health (also referred to herein as the "Corporation"); and

WHEREAS, each of GGH and SSMH have previously entered into a Management Services Agreement with URMC, dated as of October, 1, 2020, and approved by the NYS Department of Health on October 19, 2020, and Board wishes to further integrate and strengthen their clinical service offerings through a formal alignment ("Alignment"); and

WHEREAS, URMC and the Board believe that the Alignment will enable URMC to establish new clinical programs to offer additional specialty services at GGH and to provide operational assistance and cost savings to GGH, SSMH and other clinical affiliates of FLH; and

WHEREAS, the Board seeks to improve the efficiency of the Corporation's and other clinical affiliates of FLH's services, reduce their costs, increase their access to capital and achieve certain other goals and objectives set forth in the Agreement;

WHEREAS, the members of the Board of Directors, acting on behalf of the Corporation, find it in the best interests of the Corporation to adopt the following resolutions.

RESOLVED, that the Corporation shall enter into a Master Alignment Agreement (the "Master Alignment Agreement"), substantially in the form presented to the Board today, providing for the affiliation of the Corporation and each FLH affiliate with the University of Rochester ("UR") and the University of Rochester Medical Center ("URMC"), pursuant to

which UR shall become the sole member of FLH; FLH shall remain the sole member of GGH, SSMH, LCG-N, LCG-S, HLC, TB-HDFC, GG-HDFC and FLHF; SSMH shall remain the sole shareholder of SVI; a physician designated by GGH shall remain the sole shareholder of FLM; and GGH shall remain the sole member of FLHCN; and be it further

RESOLVED, as sole member of FLH, UR shall have all the rights and authority of members under the New York Not-for-Profit Corporation Law and common law except as specifically limited by the Master Alignment Agreement, and certain powers shall be reserved to UR and FLH, as set forth in the Master Alignment Agreement; and

RESOLVED, that, pursuant to the Master Alignment Agreement, each FLH affiliate with a board consisting of the same individuals as the FLH Board (the "Mirror Board Entities") shall cause to be appointed three (3) individuals appointed by UR, which number shall increase proportionately if the size of such board increases, as voting members (the "URMC Class of Directors"); and each FLH affiliate with a board consisting of individuals who are not the same individuals and the FLH Board (the "Non-Mirror Board Entities") shall cause to be appointed one (1) voting member to be appointed by the URMC CEO; and the URMC CEO shall have the right to appoint two (2) voting members to each committee of a Mirror Board Entity; and

RESOLVED, the current terms of the FLH Directors shall be extended for three (3) additional years, and UR shall not have the right to remove any FLH Director for five (5) years; and

RESOLVED, that certain Board actions will require the approval of the URMC Class of Directors, certain actions will be reserved to FLH with respect to the Non-Mirror Board Entities, as described in the Master Alignment Agreement, and UR, as the sole member of FLH, shall have certain reserved powers with respect to FLH and FLH's Affiliates; and

RESOLVED, that the Certificate of Incorporation and Bylaws of the Corporation be amended to reflect all of the foregoing changes, as described in the Master Alignment Agreement; and

RESOLVED, that, the closing of the transactions contemplated by the Master Alignment Agreement are subject to satisfactory due diligence review by the parties thereto, and certain other conditions; and

RESOLVED, that, subject to receipt of all necessary regulatory approvals, the President & CEO or other appropriate officers of the Corporation be, and hereby are, authorized, empowered and directed, without any further action of this Board, in the name and on behalf of the Corporation, to negotiate and approve, execute and deliver, and/or acknowledge and consent to, as the case may be, a Master Alignment Agreement to be entered into by and between the parties set forth in the first paragraph hereof, containing terms and conditions presented to the meeting, with such change or changes therein, or amendments thereto, as the officer executing the same on behalf of the Corporation shall, upon consultation with counsel, approve, the execution thereof with such change or changes to be conclusive evidence of the authority therefore; and be it further

RESOLVED, that the President & CEO or other appropriate officers of the Corporation be, and hereby are, authorized, empowered and directed, in the name and on behalf of the Corporation, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer or Director of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of: December 22, 2021 Board of Directors

Exhibit B

RESOLUTIONS

OF THE

BOARD OF DIRECTORS OF

FINGER LAKES REGIONAL HEALTH SYSTEM, INC.

WHEREAS, Finger Lakes Regional Health System, Inc., dba Finger Lakes Health (the "Corporation") entered into the Master Alignment Agreement ("Master Alignment Agreement"), dated April 14, 2022, by and among the University of Rochester ("UR") and University of Rochester Medical Center ("URMC"); and Finger Lakes Regional Health System, Inc., dba Finger Lakes Health ("FLH"), Geneva General Hospital ("GGH"); Soldiers and Sailors Memorial Hospital of Yates County ("SSMH"), Geneva Nursing Home II, Inc., dba Living Center at Geneva - North ("LCG-N"), Geneva Nursing Home, Inc., dba Living Center at Geneva - South ("LCG-S"), Huntington Nursing Home, Inc., dba Huntington Living Center ("HLC"), Taylor-Brown Housing Development Fund Company, Inc. ("TB-HDFC"), Geneva General Housing Development Fund Company, Inc. ("GG-HDFC"), Soldiers Ventures, Inc. ("SVI"), FLH Medical, P.C. ("FLM"), Finger Lakes Health College of Nursing ("FLHCN"), and the Finger Lakes Health Foundation, Inc. ("FLHF") (collectively the "FLH Affiliates", pursuant to which the parties thereto have agreed to create a single, multiple corporation system (the "Alignment"); and

WHEREAS, per the Master Alignment Agreement, to effect the Alignment, the Corporation shall adopt amended and restated bylaws as well as an amended and restated certificate of incorporation, which, among other things, make changes to the governance and structure of the Corporation and the FLH Affiliates as are specifically described in the Master Alignment Agreement;

WHEREAS, FLH and URMC have agreed that the closing of the transactions contemplated by the Master Alignment Agreement (the "Closing") shall occur, and the Alignment shall be effective, on August 1, 2023; and

WHEREAS, the Corporation's management and legal counsel have presented amended and restated bylaws as required to effect the Alignment, as well as other changes that are recommended as necessary or appropriate, forms of which have been presented to the Board today and are attached as Exhibit A hereto; and

WHEREAS, the Corporation's management and legal counsel have presented an amended and restated certificate of incorporation of the Corporation for purposes of the Alignment, a form of which have been presented to the Board today and is attached as Exhibit B hereto; and it is hereby

RESOLVED, that, to effectuate the transactions contemplated by the Master Alignment Agreement, and to make other changes as have been recommended by management as necessary or appropriate, the Board of Directors of the Corporation hereby approves the adoption of the

amended and restated bylaws set forth in Exhibit A hereto, subject to corrections consistent with alignment and/or typographical issues as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, to become effective on August 1, 2023; and be it further

RESOLVED, that, the Board of Directors hereby approves the adoption of the amended and restated certificate of incorporation set forth in Exhibit B hereto, subject to such changes as the President & CEO of the Corporation shall, upon consultation with counsel, deem appropriate, including as may be requested by any third party with the authority to approve amendments to the Corporation's certificate of incorporation, including but not limited to state or federal regulators; authorizes the President of the Corporation to execute the restated certificate of incorporation and to file it promptly upon receipt of any required third party approvals; and be it further

RESOLVED, that, if the Closing does not occur for any reason, the changes to the certificate of incorporation and bylaws described in the foregoing resolution shall be deemed to not have been adopted, and shall be of no force and effect; and be it further

RESOLVED, that the President & CEO of the Corporation be, and hereby are, authorized, empowered and directed, in the name and on behalf of the Corporation, to take such additional action and to execute and deliver such additional agreements, documents and instruments as he or she may deem necessary or appropriate to implement the provisions of the foregoing resolutions, and to consummate the transactions contemplated thereby, the authority for the taking of such action and the execution and delivery of such agreements, documents or instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that any and all actions heretofore or hereafter taken by any Officer of the Corporation, consistent with the terms of the foregoing resolutions be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.

Adopted as of: July 26, 2023

[EXHIBIT OMITTED FROM CERTIFICATE]

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 18th day of June 2025, approves the filing of the Restated Certificate of Incorporation of Geneva General Hospital, dated July 31, 2023.



Department of Health

Public Health and Health Planning Council

Project # 241015-E
Centralus Health, Inc.

Program: Hospital
Purpose: Establishment

County: Tompkins
Acknowledged: January 30, 2024

Executive Summary

Description

Centralus Health, Inc. (Centralus) seeks approval to be established as the sole member and common active parent of Cayuga Health Systems, Inc. (Cayuga) and Arnot Health, Inc. (Arnot). Centralus' Board of Directors will be comprised of current board members from Cayuga Medical Center and Arnot Ogden Medical Center. Cayuga and Arnot are comprised of four (4) hospitals, two (2) nursing homes, one (1) certified home health agency (CHHA), and one (1) licensed home care service agency.

On September 15, 2023, Cayuga and Arnot entered into an executed affiliation agreement with Centralus. As the sole member and common active parent of Cayuga and Arnot, Centralus will have the power and authority to make decisions for its affiliates as stated in its Affiliation Agreement, Certificate of Incorporation, bylaws, and the active parent powers regarding Cayuga and Arnot affiliates as described in 10 NYCRR 405.1(c).

The approval of Centralus as active parent and co-operator is part of a transformation plan developed by Cayuga and Arnot to restore Arnot's financial stability while maintaining Cayuga's. Cayuga and Arnot have identified efficiencies, economies of scale, and opportunities for value creation through collaboration. An immediate example of this is the enterprise-wide implementation of EPIC electronic health records system, which is supported by \$15 million in New York Statewide Transformation Grant funds.

Cayuga is a safety net provider operating primarily in Tompkins, Schuyler, and Cortland counties, while Arnot is a safety net provider primarily serving Chemung and Steuben counties and surrounding communities.

Dr. Andreia de Lima, who is Board Certified in Internal Medicine, will be the Medical Director of Centralus Health, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary

There are no changes in beds, services, or projected utilization included in this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The following represents the consolidated budgets of Arnot Health Inc. and Cayuga Health Systems, Inc.

Budget:	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$799,129	\$908,247	\$1,016,538
Total Expenses	<u>\$869,937</u>	<u>\$990,180</u>	<u>\$1,047,408</u>
Deficiency of Revenue over Expenses	(\$70,808)	(\$81,933)	(\$30,870)

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

Recommendations

Health Systems Agency

The Common Ground, Finger Lakes Health Systems Agency, recommends Approval.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

Council Action Date

June 18, 2025

Need Analysis

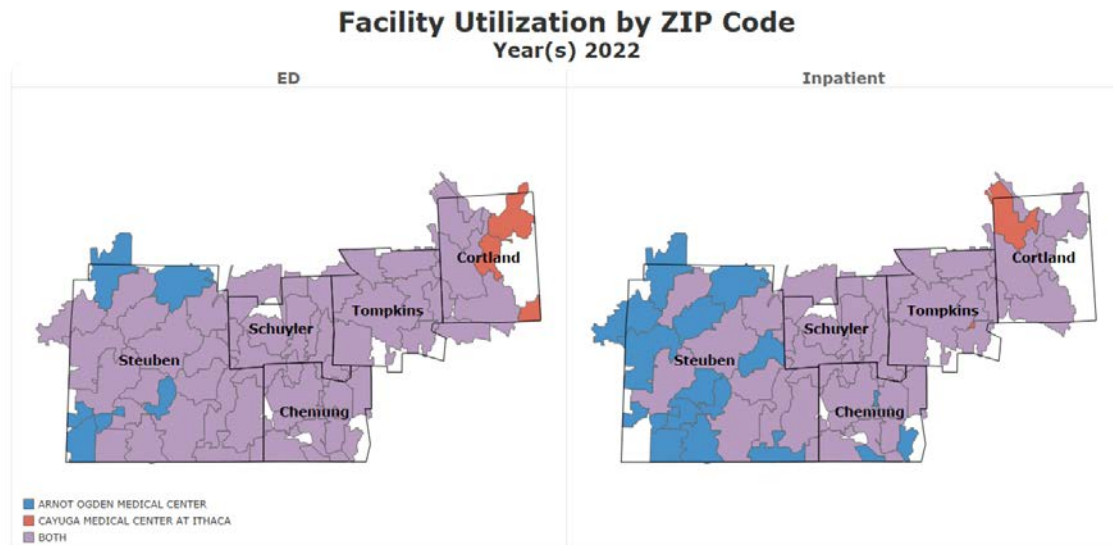
Project Description

Centralus Health, Inc. is seeking approval to become the established sole member and common active parent of Cayuga Health System, Inc., and Arnot Health, Inc. This transaction is to establish a coordinated, highly integrated system with the objectives of improving quality, increasing access, and lowering the costs of health care in the communities served by both Cayuga Health and Arnot Health.

Cayuga Health System and Arnot Health are both safety net providers. Under the parent organization of Centralus Health, Inc., will be the following:

- Cayuga Medical Center at Ithaca, a 212-bed Hospital in Tompkins County
- Schuyler Hospital, a 16-bed Hospital in Schuyler County
- Arnot Ogden Medical Center, a 266-bed Hospital in Chemung County
- Ira Davenport Memorial Hospital, a 35-bed Hospital in Steuben County

The maps below, created by Common Ground Health, show the 2022 utilization of Arnot Ogden Medical Center and Cayuga Medical Center at Ithaca, and where they overlap coverage.



Source: Statewide Planning and Research Cooperative System (SPARCS), Years 2022
Analysis Completed by Common Ground Health

Common Ground
Health

Conclusion

There are no proposed changes to beds or services in this proposal that would impact availability or utilization.

Program Analysis

Project Proposal

Proposed Operator	Centralus Health, Inc.
To Be Known As	Centralus
Site Address	101 Dates Drive, Suite N-500, Ithaca, New York 14850 (Chemung County).
Specialties	No Changes
Hours of Operation	No Changes
Staffing (1st Year / 3rd Year)	4,218.82 / 4,167.49
Medical Director(s)	Dr. Andreia de Lima
Emergency, In-Patient, and Backup Support Services Agreement and Distance	No changes - Cayuga Health System, Inc. Arnot Health, Inc.

The proposed organizational structure will oversee the following hospitals:

- **Cayuga Medical Center at Ithaca** (212-bed Hospital) (Tompkins County) - Level 2 (Perinatal Center and Primary Stroke Center)
- **Schuyler Hospital** (16-bed Hospital) (Schuyler County)
- **Arnot Ogden Medical Center** (266-bed Hospital) (Chemung County), Level 3 (Perinatal Center and Primary Stroke Center)
- **Ira Davenport Memorial Hospital** (35-bed Hospital) (Steuben County) - Level 3 (Primary Stroke Center)

There are no projected changes in beds, services, or utilization at the Cayuga Health or the Arnot Health systems proposed in this project.

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

Staffing Categories	Current Year	Year One	Year Three
Management & Supervision	353.00	349.70	343.00
Technician and Specialist	454.80	451.80	445.70
Registered Nurses	744.00	739.09	729.12
Licensed Practical Nurses	42.30	42.02	41.45
Aides, Orderlies & Attendants	218.00	215.36	209.99
Physicians	131.209	130.33	128.58
PGY Physicians	153.60	152.59	150.53
Physician Assistants	152.60	151.59	149.55
Nurse Practitioners	52.80	52.45	51.74
Social Workers and Psychologists	89.00	88.41	87.22
Physical Therapists & PT Assistants	74.20	73.71	72.72
Occupational Therapist & OT Assistants	29.50	29.31	28.91
Speech Therapists and Speech Assistants	10.10	10.03	9.90
Other Therapists and Assistants	235.40	233.85	230.69
Infection Control, Environmental & Food Service	438.50	438.50	438.50
Clerical and Administrative	1065.10	1060.08	1049.89
Total Number of Employees	4,244.10	4,218.82	4,167.49

There will be a decrease of 76.61 FTEs from the Current Year to Year Three. The applicant states, "Many of the reductions will be attributable to efficiencies achieved through the combined organization, natural attrition, and the elimination of vacant positions. The reductions will have no impact on the services being offered by any of the entities because of the affiliation, nor impact on plans to expand existing or implement new programs."

Centralus Inc.'s Board of Directors is comprised of current board members from Cayuga Medical Center and Arnot Ogden Medical Center.

Member
Martin Stallone, M.D. (Cayuga Medical Center)
Arie Johannes van den Blink III (Arnot Ogden Medical Center)
Thomas LiVigne (Cayuga Medical Center)
Gary Koretzky, M.D. (Cayuga Medical Center)
Paul Streeter (Cayuga Medical Center)
Laurie J. Mante (Cayuga Medical Center)
Krista Niles-Updyke (Arnot Ogden Medical Center)

Character and Competence

Andreia P. de Lima, MD, is the proposed medical director of the facility. Dr. de Lima served as a hospitalist at Cayuga Medical Center since 2009 and was the Associate Program Director. Dr. de Lima has served in multiple leadership roles within Cayuga Medical Center, Cayuga Medical Associates, with Cayuga Health Partners, as a Utilization Review Physician Advisor, as Department of Medicine Chair, and as the Vice President of the Medical Staff. In 2021, Dr. de Lima became the new Vice President of Medical Affairs at Cayuga Medical Center and continues to perform clinical duties part-time as a hospitalist. In 2023 Dr. de Lima became the Chief Medical Officer for the CHS hospitals.

Dr. de Lima graduated with a Doctor of Medicine from Universidade do Estado Para in 1999; received a Master's in Business Administration (MBA) from the University of Massachusetts Amherst-Isenberg School of Management in 2024; completed an Internal Medicine Residency at Saint Barnabas Hospital; and completed a fellowship in Rheumatology at the Hospital de Base do Distrito Federal. Dr. de Lima is board certified in Internal Medicine and is registered to practice medicine in New York through May 31, 2026.

Martin Stallone, MD, is currently licensed in New York State until March 31, 2027. Educational background includes the following: graduated from the Naval War College, Newport Rhode Island, with a Master's in 2009; from the University of Pennsylvania School of Medicine, Philadelphia, Pennsylvania, with a MD/MBA in 2004; and from Cornell University, Ithaca, New York, with a Bachelor of Science in 1998.

Dr. Stallone is currently working at Cayuga Medical Center at Ithaca (CMC) in a variety of roles, and for the Cayuga Health System (CHS) as the President and as Chief Executive Officer (CEO) from 2019 to present; as the Vice President of Physician Operations (VPPO) from 2017 to 2019; Cayuga Medical Associates, P.C (CMA) as President from 2017 to present; and as Medical Director at Cayuga Area Plan/Preferred (CAP) from 2011 to 2019 as the Medical Director at Cayuga Medical Center (CMC) at Ithaca from 2009 to 2017.

Arie Johannes van den Blink III received a Doctor of Law (JD) degree from Rutgers-Camden School of Law in Camden, New Jersey, in May 1984 and a Bachelor of Science degree from Minnesota State University-Mankato in Mankato, Minnesota, in March 1980.

Arie van den Blink III has been a board director with Arnot Health since 2015; was on the Board of Directors with St. Joseph's Hospital in Elmira, NY from 2015 to 2019; has been the Director of Elmira Savings Bank since January 2012; and is the current CEO and Chairperson of the Hillard Corporation, a manufacturing company, in Elmira, New York since 1988 to present.

Thomas (Tom) P. LiVigne received a Master of Science in Sports Medicine with emphasis on athletic training from Indiana State University in Terre Haute, Indiana, in 1977, and a Bachelor of Science degree from SUNY Cortland in Cortland, New York, in 1976.

Thomas LiVigne is currently the chairperson of the Cayuga Health System, Inc (CHS) Board of Directors and was the Director of Real Estate Operations for Cornell University from July 1977 to March 2015; and has been a Board Member with several facilities such as Cayuga Medical Center at Ithaca, Inc. from 2013 to present; Schuyler Hospital from 2016 to present; Seneca View from 2016 to present; CARS (Ithaca Alpha House Center, Inc.) from 2023 to present. Is listed as the Owner/CEO of Cayuga Area Plan, Inc. since December 1986.

Gary Alan Koretzky, M.D., Ph.D., received two (2) degrees in 1984, a Ph.D. from the University of Pennsylvania in Philadelphia, Pennsylvania 1984, and an MD degree. Dr. Koretzky was registered to practice in the states of CA, PA, and IA but is no longer practicing. Dr. Koretzky currently has an office in Ithaca, New York; and is a Professor of Medicine at the Weill Cornell Medicine in New York City, New York from 2014 to present; Vice Provost for Academic Integration at Cornell University from 2018 to present; a Professor of Microbiology and Immunology at Cornell University/College of Veterinary Medicine from 2019 to present; and as a Director Cornell Center for immunology at Cornell University from 2019 to present.

Dr. Koretzky has been a Board Member with several facilities, such as Cayuga Medical Center at Ithaca, Inc., from 2023 to present, Schuyler Hospital from 2023 to present, Seneca View from 2023 to present, and CARS (Ithaca Alpha House Center, Inc.) from 2023 to present.

Paul J. Streeter received a Bachelor of Science degree from LeMoyne College in Syracuse, New York, in May 1983 and a Master's in Business Administration from Cornell University in Ithaca, New York, in May 1995, and was licensed by New York State as a Certified Public Accountant which has been inactive since 2013. Currently, Paul Streeter is officially retired as of July 2021. Employment history included Vice President for Budget and Planning with Cornell University, Ithaca, New York, from March 2014 to July 2021; as Assistant Dean for Finance and Administration with Cornell University/College of Veterinary Medicine from June 1010 to March 2014.

Paul Streeter has been a Board Member with several facilities, such as Cayuga Medical Center at Ithaca, Inc., from 2023 to present, Schuyler Hospital from 2023 to present, Seneca View from 2023 to present, and CARS (Ithaca Alpha House Center, Inc.) from 2023 to present.

Laurie J. Mante received a Bachelor of Science in Business/Marketing degree from SUNY Plattsburg in Plattsburg, New York in 1987; a Master's Business Administration in Health Systems Management from Clarkston University (Schenectady College) in Schenectady, New York in 1987; and received a license as a Nursing Home Administrator, license number 04886, from New York State in 2001 and remains in good standing until December 31, 2025.

Currently, Laurie Mante is employed as the Executive Director at Kendal at Ithaca since November 2019 to present; was a Regional Administrator for Centers Health Care from November 2018 to November 2019; as the Vice President for Regional Operations with St. Peter's Health Partners from August 2002 until November 2018; as the Executive Director of Eddy Village Green (The Eddy) from May 2016 to June 2018; and as the Executive Director of The Community Hospice with St. Peter's Health Partners from May 2012 to May 2016.

Laurie Mante has been a Board Member with several facilities, such as Cayuga Medical Center at Ithaca, Inc., from 2022 to present, Schuyler Hospital from 2022 to present, Seneca View from 2022 to present, and CARS (Ithaca Alpha House Center, Inc.) from 2023 to present.

Krista L. Niles-Updyke, CPA, received a Bachelor's in Accounting/Business Management from Elmira College in Elmira, New York, in June 1997 and is registered as a Certified Public Accountant, license number 084151, until August 31, 2026. Currently, Krista Niles-Updyke is employed as a Partner-Owner/CPA with Mengel, Metzger, Barr & Co., LLP in Elmira, New York since July 1997 to present; and works for the Town of Big Flats with the Zoning Board of Appeals in Big Flats, New York from 2018 to present.

Krista Niles-Updyke has been a board member with Arnot Ogden Medical Center since May of 2021; and is currently the Treasurer of Big Flats Little League, a member of the Resource Development Committee for the Food Bank of the Southern Tier, the President's Council member for Elmira College, and is a member of the Town of Big Flats Zoning Board of Appeals. Krista Niles-Updyke is also affiliated with the American Institute of Certified Public Accountants and the New York State Society of Certified Public Accountants.

Affiliated Facilities Compliance History:

Kendal at Ithaca, at 2230 Triphammer Road, Ithaca, NY, remains in compliance.

Eddy Village Green (The Eddy), at 421 West Columbia Street, Cohoes, NY 12047
The Eddy paid a civil monetary penalty of \$3,963.00 for enforcement in Quality-of-Care Highest Practicable Potential (415.12). There are no current open enforcements.

Cayuga Medical Center at Ithaca, a Level 2 perinatal/birthing hospital and primary stroke center, a 212-bed hospital in Tompkins County, paid a fine of \$26,000.00 for a student death in December 2023. The Facility had twenty-one (21) operating rooms (ORs) running. Twelve of the ORs with a total of 24 staff were not following acceptable standards of practice for Infection Control practices in the Surgical Areas.

Schuyler Hospital, a 16-bed hospital in Schuyler County, remains in compliance.

Arnot Ogden Medical Center, a Level 3 perinatal/birthing hospital and stroke center, 266-bed Hospital in Chemung County, remains in compliance.

Arnot Ogden Medical Center was found liable in a \$5 million verdict for a 2017 surgery. Gary Mann, M.D., was found liable for causing catastrophic injuries to a patient in 2017 during a gallbladder surgery. Dr. Mann is currently employed at Roswell Park in Buffalo.

Ira Davenport Memorial Hospital, a 35-bed hospital in Steuben County) - Level 3 (Primary Stoke Center) remains in compliance.

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

Prevention Agenda

Centralus Health is seeking approval to become the established sole member and common active parent of Cayuga Health System, Inc., and Arnot Health, Inc. Cayuga Health and Arnot Health are implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

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

This affiliation will support the local Prevention Agenda priorities that were identified in the most recently completed Community Service Plans (CSPs) and will make these efforts broader and more efficient. In 2021, Cayuga Health spent \$52,069,661, and Arnot Health spent \$19,339 on community health improvement services.

Family Health

The Applicant seeks to become the established sole member and parent of two health systems – Cayuga Health System, Inc., and Arnot Health, Inc. The applicant organizations have determined that this new structure would benefit the hospitals and communities in which they serve.

The new organizational structure would oversee the following hospitals:

- Cayuga Medical Center (Tompkins)
- Schuyler Hospital (Schuyler)
- Arnot Ogden Medical Center (Chemung)
- Ira Davenport Memorial Hospital (Steuben)

Additional facilities (nursing homes, CHHAs) are not included in this review as they do not provide services that fall within the Division of Family Health's expertise.

With regards to Division of Family Health's interests, only Cayuga Medical Center (Level I) and Arnot Ogden Medical Center (Level III) are designated perinatal hospitals, or "birthing hospitals". None of the agencies are designated as Sexual Assault Forensic Examiner Hospitals, or "SAFE hospitals".

Impact on Perinatal Level of Care Designation:

As this organizational restructure is described as having no impact on the capacity of care or number of maternity and/or neonatal intensive care unit (NICU) beds, there is no anticipated impact on the facility's level of care designation.

The one potential issue that may need to be discussed internally and with the respective Regional Perinatal Centers is that Cayuga Hospital is currently affiliated with Crouse Hospital, Syracuse, NY. Arnot Ogden is currently affiliated with Strong Memorial Hospital, Rochester, NY. These discussions and any resulting actions are separate from consideration of this application.

Determination: The Division of Family Health approves this application from the perspective of providing quality care to pregnant and birthing people and their families.

Conclusion

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

Financial Analysis

Operating Budget

The applicant provided the Current Year results and the Year One and Year Three operating budget, in 2025 dollars. The following represents the consolidated budgets and assumptions detail for post-affiliation:

Inpatient Revenue	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Day</u>	<u>Total</u>	<u>Per day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>
	<u>(Whole \$)</u>	<u>(\$000s)</u>	<u>(Whole \$)</u>	<u>(\$000s)</u>	<u>(Whole \$)</u>	<u>(\$000s)</u>
Medicare FFS	\$5,185	\$121,328	\$5,643	\$133,071	\$6,195	\$148,117
Medicare MC	\$6,623	\$126,157	\$7,218	\$138,368	\$7,929	\$154,012
Medicaid FFS	\$760	\$53,362	\$815	\$58,526	\$887	\$65,143
Medicaid MC	\$3,655	\$85,362	\$3,974	\$93,624	\$4,361	\$104,209
Commercial FFS	\$4,719	\$26,339	\$5,139	\$28,889	\$5,642	\$32,155
Commercial MC	\$6,541	\$5,854	\$7,136	\$6,421	\$7,845	\$7,147
Private Pay	\$668	\$10,687	\$716	\$11,721	\$780	\$13,047
Charity Care	\$36,645	\$1,483	\$40,150	\$1,627	\$44,713	\$1,811
All Other	\$4,819	\$53,069	\$5,246	\$58,206	\$5,861	\$64,787
Total Revenue		\$483,641		\$530,453		\$590,428
Revenue Reduction		(\$274,588)		(\$309,580)		(\$338,701)
Other Operating Revenue		\$49,679		\$56,010		\$61,278
<u>Non-Operating Revenue</u>		\$4,825		\$5,440		\$5,952
Total Revenues		\$263,557		\$282,323		\$318,957
<u>Expenses</u>						
Operations	\$1,728	\$292,860	\$1,907	\$328,406	\$1,992	\$348,846
Capital	\$90	<u>\$15,212</u>	<u>\$93</u>	<u>\$16,000</u>	<u>\$97</u>	<u>\$16,992</u>
Total Expenses	\$1,818	\$308,072	\$2,000	\$344,406	\$2,089	\$365,838
Days		169,487		172,181		175,109

Outpatient Revenue	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
	<u>(Whole \$)</u>	<u>(\$000s)</u>	<u>(Whole \$)</u>	<u>(\$000s)</u>	<u>(Whole \$)</u>	<u>(\$000s)</u>
Medicare FFS	\$1,718	\$293,552	\$1,933	\$334,421	\$2,027	\$363,527
Medicare MC	\$1,375	\$264,618	\$1,547	\$301,459	\$1,623	\$327,695
Medicaid FFS	\$1,878	\$29,059	\$2,113	\$33,105	\$2,216	\$35,986
Medicaid MC	\$1,204	\$192,779	\$1,354	\$219,618	\$1,420	\$238,732
Commercial FFS	\$1,192	\$140,965	\$1,341	\$160,590	\$1,406	\$174,566
Commercial MC	\$1,285	\$24,475	\$1,445	\$27,883	\$1,516	\$30,310
Private Pay	\$ 75	\$19,118	\$84	\$21,780	\$88	\$23,675
Charity Care	\$6,476	\$3,743	\$7,289	\$4,264	\$7,636	\$4,635
All Other	\$1,348	\$289,116	\$1,517	\$329,367	\$1,590	\$358,033
Total Revenue		\$1,257,425		\$1,432,487		\$1,557,159
Revenue Deduction		(\$765,959)		(\$864,532)		(\$926,067)
<u>Other Operating Revenue</u>		<u>\$30,811</u>		<u>\$44,647</u>		<u>\$65,048</u>
Non-Operating Revenue		\$13,295		\$13,322		\$1,441
Total Revenues		\$535,572		\$625,924		\$697,581
<u>Expenses</u>						
Operations	\$ 468	\$537,044	\$533	\$618,907	\$542	\$653,124
Capital	\$22	<u>\$24,821</u>	\$23	<u>\$26,867</u>	\$24	<u>\$28,446</u>
Total Expenses	\$490	\$561,865	\$556	\$645,774	\$566	\$681,570
Visits		1,147,747		1,162,055		1,204,509
Total Revenue (Inpatient and Outpatient)		\$799,129		\$908,247		\$1,016,538
Total Expenses		<u>\$869,937</u>		<u>\$990,180</u>		<u>\$1,047,408</u>
(Deficiency)/excess of Revenue over Expenses		(\$70,808)		(\$81,933)		(\$30,870)

The following is noted with respect to the submitted budget:

- The Deficiency of Revenues over Expenses in Year One and Year Three include depreciation and interest expenses, without which the operations would generate positive earnings by Year Three.
- All assumptions have been based on the experience of the various operating entities, cost reporting, and other pertinent financial data, including rates of reimbursement where applicable.
- Arnot Ogden Medical Center received \$57,712,468 in Vital Access Provider Assurance Program (VAPAP) funding for SFY 24, and through January 3, 2025, they have received \$62,400,000 for SFY 25. This funding is not included in the budget.
- Revenue reductions for inpatient and outpatient services include contractual obligations for third-party payors, allowances for doubtful accounts, charity care, and bad debt.
 - The Total Current Year revenue reduction is \$1,040,546,989, with Cayuga's portion being \$388,124,027 and Arnot's portion being \$652,422,962.
 - The Total Year One revenue reduction is \$1,174,111,208, with Cayuga's portion being \$437,943,481 and Arnot's portion being \$736,167,727.
 - The Total Year Three revenue reduction is \$1,264,767,703, with Cayuga's portion being \$471,758,353 and Arnot's portion being \$793,009,350.

Utilization by payor for the consolidated Arnot/Cayuga Health Systems is as follows:

<u>Inpatient:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	41.40%	41.73%	41.94%
Medicaid-MC	13.77%	13.68%	13.65%
Medicare-FFS	13.81%	13.69%	13.65%
Medicare-MC	11.24%	11.13%	11.09%
Commercial FFS	3.29%	3.27%	3.25%
Commercial MC	.53%	.52%	.52%
Private Pay	9.43%	9.51%	9.55%
Charity Care	.02%	.02%	.02%
All Other	<u>6.51%</u>	<u>6.45%</u>	<u>6.33%</u>
Total	100%	100%	100%

<u>Outpatient:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	1.35%	1.35%	1.35%
Medicaid-MC	13.96%	13.96%	13.96%
Medicare-FFS	14.89%	14.89%	14.89%
Medicare-MC	16.77%	16.77%	16.77%
Commercial FFS	10.30%	10.30%	10.30%
Commercial MC	1.66%	1.66%	1.66%
Private Pay	22.34%	22.34%	22.34%
Charity Care	.05%	.05%	.05%
All Other	<u>18.68%</u>	<u>18.68%</u>	<u>18.68%</u>
Total	100%	100%	100%

Affiliation Agreement

Cayuga Health Systems, Inc., entered into an Affiliation Agreement with Arnot Health, Inc., to create a new active parent entity, Centralus, to control the operations. The applicant has submitted an executed agreement, summarized below:

Dated:	15-Sep-23
Entity:	Cayuga Health Systems, Inc.
Entity:	Arnot Health, Inc
New Parent to both Entities	Centralus Health, Inc.

Capability and Feasibility

There are no project costs associated with this application. While the applicant has shown losses from the Current Year to Year Three, they've projected improved operations by Year Three with an overall positive change of \$39,938,000. The loss in Year Three includes \$35,666,138 in depreciation expense and \$1,287,230 in interest expense, without which the operations would generate earnings before interest and depreciation of approximately \$6,083,368. The facility has also received VAPAP funding for SFY24 of \$57,712,468, and as of January 3, 2025, they've received \$62,400,000 for SFY 25. This funding was not included in the budget as it is awarded on a year-by-year basis, which is not guaranteed.

BFA Attachment A, 2022-2023 Certified Financial Statements of Arnot Health, Inc., shows a negative working capital position, positive net asset position, and a deficiency of revenue over expenses of (\$41,574,513) in 2022. The deficiency is attributed to the facility's operations worsening further due to the pandemic, cost increases, and a lack of consistent volume recovery. In 2023, Arnot had a positive working capital position, positive net asset position, and an excess of revenue over expenses of \$6,044,024.

BFA Attachment B, 2024 Internal Financial Statements of Arnot Health, Inc., show the organization had positive working capital and net asset positions. The organization experienced a deficiency of revenues over expenses of (\$910,006).

BFA Attachment A, 2022-2023 Certified Financial Statements of Cayuga Health System, Inc., shows a positive working capital position, positive net asset position, and a deficiency of revenue over expenses of (\$22,600,862) in 2022. In 2023, Cayuga had a negative working capital position, positive net asset position, and a deficiency of revenue over expenses of (\$12,566,341). Losses are attributable to increasing market inflation pressures. Operating costs have increased by between 9% to 25% annually, while payer rates have only increased by 3% to 10% annually.

BFA Attachment D, 2024 Internal Financial Statements of Cayuga Health System, Inc. show the facility had negative working capital, a positive net asset position, and experienced an excess of revenue over expenses of \$17,874,380.

BFA Attachment E, Pro Forma Balance Sheet of Centralus Health, Inc., shows the new entity will have a positive net asset position of \$334,817,150 as of the first day of operations.

Conclusion

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

Attachments

HSA Attachment A	Common Ground, Finger Lakes Health Systems Agency Health Review
BFA Attachment A	2022-2023 Certified Financial Statements of Arnot Health, Inc.
BFA Attachment B	2024 Internal Financial Statements of Arnot Health, Inc.
BFA Attachment C	2022-2023 Certified Financial Statements of Cayuga Health System, Inc.
BFA Attachment D	2024 Internal Financial Statements of Cayuga Health System, Inc.
BFA Attachment E	Pro Forma Balance Sheet for Centralus Health, Inc.
BFA Attachment F	Organization Chart for Centralus Health Inc., Cayuga Health Systems Inc., and Arnot Health Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Centralus Health, Inc. as the parent of Cayuga Health System, Inc. and Arnot Health, Inc., and the active parent/co-operator of four (4) hospitals, two (2) residential health care facilities, one (1) certified home health agency, and one (1) licensed home care service agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

241015 E

FACILITY/APPLICANT:

Centralus Health, Inc.

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Department of Health

Public Health and Health Planning Council

Project # 251147-E Everett Road Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Albany
Acknowledged: March 28, 2025

Executive Summary

Description

Everett Road ASC, LLC d/b/a Everett Road Surgery Center (the Center), an existing New York proprietary, limited liability company that operates an Article 28 multi-specialty freestanding ambulatory surgery center (FASC) at 123 Everett Road, Suite 200 (Albany County), requests approval for OrthoNY ASC Holding, LLC to transfer its entire 66% ownership interest to two (2) proposed new members: OrthoNY Master ASC Holdings, LLC (ASC Holdings) and OrthopedicsNY, LLP (OrthoNY).

The Center is currently owned by the following three (3) members: OrthoNY ASC Holdings, LLC (66%); St. Peter's Hospital of the City of Albany (20%); and AENT ASC Holdings, LLC (14%).

The current and proposed ownership is presented below:

Everett Road ASC, LLC (current)

Members	Current Interest
OrthoNY ASC Holdings, LLC	66%
St. Peter's Hospital	20%
AENT Holdings, LLC	14%
Total:	100%

Everett Road ASC, LLC (proposed)

Members	Proposed Interest
OrthoNY Master ASC Holdings, LLC (ASC Holdings)	49.5%
OrthopedicsNY, LLP (OrthoNY)	16.5%

St. Peter's Hospital	20%
AENT Holdings, LLC	14%
Total	100%

OrthoNY Master ASC Holdings, LLC, a new corporate member, is comprised of thirty-eight (38) physician members with direct ownership in the LLC.

OrthopedicsNY LLP is comprised of the 33 physician members.

Frank Congiusta, M.D., Board-certified in Orthopedics, will continue to serve as the Medical Director. The Center has negotiated a Transfer and Affiliation Agreement for emergency and backup services with St. Peter's Hospital, 5.1 miles (11 minutes travel time) away.

OPCHSM Recommendation
Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs or service charges associated with this application. OrthoNY ASC Holding, LLC will pay Dr. Fletcher \$225,000 to

redeem his 5.263% membership interest in OrthoNY ASC Holding, LLC. Six new physician members will each pay \$400,000 for 2.632% membership in OrthoNY Master ASC Holdings LLC. Their payments are held in escrow.

<u>Budget:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$17,160,970	\$17,233,136	\$17,233,136
Expenses:	\$14,054,733	\$14,666,697	\$14,846,722
Net Income:	\$3,106,237	\$2,566,440	\$2,386,414

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

Council Action Date

June 18, 2025

Program Analysis

Program Description

Everett Road ASC, LLC d/b/a Everett Road Surgery Center operates an Article 28 multi-specialty freestanding ambulatory surgery center at 123 Everett Road, Albany (Albany County), New York 12205 (the Center). The Center is currently owned by the three (3) members: OrthoNY ASC Holdings, LLC (66%); St. Peter's Hospital of the City of Albany (20%); and AENT ASC Holdings, LLC (14%). The Center is seeking approval for OrthoNY ASC Holdings, LLC to transfer its entire 66% membership interest to two (2) proposed new corporate members: OrthoNY Master ASC Holdings, LLC (ASC Holdings) and OrthopedicsNY, LLP (OrthoNY). OrthoNY ASC Holdings, LLC will withdraw from the Center as a result of this Application. ASC Holdings will own 49.5% of the Center and OrthoNY will own 16.5% of the Center. Furthermore, one (1) existing individual member of OrthoNY ASC Holdings, LLC, Frederick Fletcher, M.D., will redeem his membership interest and thereby withdraw from the Center. The Center will continue to be operated by Everett Road ASC, LLC.

ASC Holdings will own 49.5% of the Center and will be comprised of 38 physician members, each of whom will own approximately a 2.632% interest in ASC Holdings.

OrthoNY will own 16.5% of the Center and will be comprised of 33 physician partners. One (1) physician partner, Lee Kaback, will own approximately a 5.888% interest in OrthoNY. The remaining 32 physician partners will own approximately a 2.941% interest in OrthoNY.

Frank Congiusta, M.D., an existing member of OrthoNY ASC Holdings, LLC, and a proposed member of ASC Holdings and partner in OrthoNY, will continue to serve as the Center's Medical Director.

Everett Road ASC, LLC (current ownership)

Members	Percentage Interests
OrthoNY ASC Holdings, LLC	66%
St. Peter's Hospital of the City of Albany	20%
AENT Holdings, LLC	14%
Total:	100%

Everett Road ASC, LLC (proposed ownership)

Members	Proposed Interest
OrthoNY Master ASC Holdings, LLC (ASC Holdings)	49.5%
OrthopedicsNY, LLP (OrthoNY)	16.5%
St. Peter's Hospital of the City of Albany	20%
AENT Holdings, LLC	14%
Total	100%

OrthoNY Master ASC Holdings, LLC

Direct Membership Interest in OrthoNY Master ASC Holdings, LLC (proposed)

Members	Percentage Interest
J. David Abraham, M.D.	2.632%
James Alfandre, M.D.	2.632%
Farrukh Ansari, M.D.	2.632%
Eric Aronowitz, M.D.	2.632%
James Boler, M.D.	2.632%
Daniel Bowman, M.D.	2.632%
Adam Brod, M.D.	2.632%
Charles Buttaci, D.O.	2.632%
Frank Congiusta, M.D.	2.632%
Mark Coseo, M.D.	2.632%
Samuel Dellenbaugh, M.D.	2.632%
David Dixon, M.D.	2.632%
Daniel Donovan, M.D.	2.632%
Kevin Emr, M.D.	2.632%
Justin Ferrara, M.D.	2.632%
Kyle Flik, M.D.	2.632%
Jonathan Gainor, M.D.	2.632%
Leonard Goldstock, M.D.	2.632%
Stefanos Haddad, M.D.	2.632%
Thomas Jackson, M.D.	2.632%
Andre Johnson, M.D.	2.632%
Lee Kaback, M.D.	2.632%
Richard Katz, M.D.	2.632%
Kevin Kleis, D.O.	2.632%
Joseph LaRosa, M.D.	2.632%
William Montgomery, M.D.	2.632%
Michael Okoli, M.D.	2.632%
Amar Parikh, M.D.	2.632%
Daniil Polishchuk, M.D.	2.632%
Luke Rigolosi, M.D.	2.632%
Kevin Rosas, M.D.	2.632%
Laura Scordino, M.D.	2.632%
George Silver, M.D.	2.632%
W. James Smith, M.D.	2.632%
Tory Speert, D.O.	2.632%
Matthew Stein, M.D.	2.632%
Adam Suslak, M.D.	2.632%
John Whalen, M.D.	2.632%
Total	100.000%

OrthopedicsNY, LLP

Direct Partnerships Interest in OrthopedicsNY, LLP

Partners	Percentage Interest
J David Abraham, M.D.	2.941%
James Alfandre, M.D.	2.941%
Farrukh Ansari, M.D.	2.941%
Eric Aronowitz, M.D.	2.941%
James Boler, M.D.	2.941%
Daniel Bowman, M.D.	2.941%
Charles Buttaci, D.O.	2.941%
Frank Congiusta, M.D.	2.941%
Mark Coseo, M.D.	2.941%
Samuel Dellenbaugh, M.D.	2.941%
David Dixon, M.D.	2.941%
Daniel Donovan, M.D.	2.941%
Justin Ferrara, M.D.	2.941%
Kyle Flik, M.D.	2.941%
Jonathan Gainor, M.D.	2.941%
Leonard Goldstock, M.D.	2.941%
Thomas Jackson, M.D.	2.941%
Lee Kaback, M.D.	5.888%
Richard Katz, M.D.	2.941%
Kevin Kleis, DO.	2.941%
Joseph LaRosa, M.D.	2.941%
William Montgomery, M.D.	2.941%
Amar Parikh, M.D.	2.941%
Daniil Polishchuk, M.D.	2.941%
Luke Rigolosi, M.D.	2.941%
Kevin Rosas, M.D.	2.941%
Laura Scordino, M.D.	2.941%
George Silver, M.D.	2.941%
W. James Smith, M.D.	2.941%
Tory Speert, D.O.	2.941%
Matthew Stein, M.D.	2.941%
Adam Suslak, M.D.	2.941%
John Whalen, M.D.	2.941%
Total	100.000%

The Center has an existing transfer and affiliation agreement with St. Peter's Hospital which is located 5.1 miles and 11 minutes travel time from the Center.

Character and Competence

Character and competence was completed for the 38 new physician members with a direct membership in OrthoNY Master ASC Holdings, LLC.

J. David Abraham, M.D. has been an orthopedic surgeon with OrthoNY since 1995. Prior to this, Dr. Abraham had a solo practice from 1988-1995. Dr. Abraham graduated from Colby College with a bachelor's degree in 1975 and from Albany Medical College with a Doctor of Medicine in 1979.

James Alfandre, M.D. has been an orthopedic surgeon with OrthoNY since 2001. Dr. Alfandre also works as a staff physician for Executive Woods Ambulatory Surgery Center, St. Peter's Hospital, Samaritan Hospital, and St. Mary's Hospital in Troy. Dr. Alfandre has been on the OrthoNY Executive Committee since 2008 and has been the medical director of Executive Woods Ambulatory Surgery Center since 2008. Dr. Alfandre graduated from SUNY Health Science Center at Syracuse with a Doctor of Medicine in 1994 and is board certified in Orthopaedic Surgery.

Farrukh Ansari, M.D. has worked as an attending physician in pain management since September of 2015. Dr. Ansari has served as the chair of the physician recruitment committee at OrthoNY for four years as well as serving on the executive committee for three years. Dr. Ansari graduated from Stony Brook University School of Medicine with a Doctor of Medicine in 2010, completed an internship at Winthrop University Hospital in 2011, completed a residency in Anesthesiology at New York University School of Medicine in 2014, and completed a fellowship in Pain Medicine at Mount Sinai Beth Israel in 2015. Dr. Ansari is board certified in Anesthesiology and Pain Management.

Eric Aronowitz, M.D. has been a partner in orthopedic practice at OrthoNY since 2014 and is the Medical Director of OrthoNY Surgical Suites. Prior to this, Dr. Aronowitz was a partner in Schenectady Regional Orthopedic Associates from 2000-2014. Dr. Aronowitz graduated from the University of Vermont with a bachelor's degree in 1990, and from SUNY Health Science Center at Syracuse with a Doctor of Medicine in 1994. Dr. Aronowitz is board certified in Orthopaedic Surgery.

James Boler, M.D. has been an Orthopedic Surgeon for OrthoNY since 2014. Dr. Boler graduated from Brown University with a bachelor's degree in 1989 and from the University of Maryland School of Medicine at Baltimore with a Doctor of Medicine in 1995. Dr. Boler is board certified in Orthopaedic Surgery with a sub-certification in hand surgery.

Dr. Boler disclosed the following lawsuit:

D'ELIA, FULVIO vs. ELLIS HOSPITAL, SOMOZA, et al./Schenectady Supreme Court/2016-1290/Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was dismissed on 7/28/22.

Daniel Bowman, M.D. has been an Orthopedic Surgeon for OrthoNY since 2014. Dr. Bowman graduated from SUNY Buffalo with a bachelor's degree in 1997 and from Buffalo School of Medicine and Biomedical Sciences with a Doctor of Medicine in 2001. Dr. Bowman is board certified in Orthopaedic Surgery.

Dr. Bowman disclosed the following lawsuits:

Schuppe vs. Daniel J. Bowman, MD, James Smith/Schenectady Court/Malpractice Claim
Per the applicant, this case was discontinued on 9/28/18.

PEARMAN, CEDRIC vs. BOWMAN, DANIEL J., MD, ORTHO NY/Schenectady Supreme Court/0002088/2018/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 8/31/2021.

On 11/16/16 the New York State Office of Professional Misconduct and Physician Discipline issued a censure and reprimand with a \$1,500 fine related to having committed professional misconduct by having been convicted of Aggravated Driving While Intoxicated. The physician had satisfied the terms of conditions on April 7, 2017.

Adam Brod, M.D. has been a practicing Orthopedic Surgeon at OrthoNY since May of 2023 and has been the chair of the department of orthopedics at Glens Falls Hospital for the last six years with duties including managing the department and sitting on the medical executive committee of the hospital. Prior to this, Dr. Brod worked as an Orthopedic Surgeon at North Country Orthopedic Specialists from 2014-2018. Dr. Brod graduated from the University of Rochester with a bachelor's degree in 2004 and from the State University of New York at Buffalo with a Doctor of Medicine in 2008. Dr. Brod is board certified in Orthopaedic Surgery.

Charles Buttaci, D.O. has worked for OrthoNY as a Pain Management Specialist since 2007. Dr. Buttaci graduated from Northeastern University with a bachelor's degree in 1997 and from the University of Medicine and Dentistry of New Jersey with a Doctor of Osteopathic Medicine https://en.wikipedia.org/wiki/Doctor_of_Osteopathic_Medicine in 1997. Dr. Buttaci is board certified in Physical Medicine and Rehabilitation.

Charles Buttaci disclosed the following lawsuit:

Kathleen Connery-Lacy vs. Charles Buttaci/Albany County Court/Malpractice
Per the applicant, this case was settled on 1/4/19.

Frank Congiusta, M.D. has been an Orthopedic Surgeon with OrthoNY since 2007 and will continue to be the medical director of Everett Road Surgery Center. Dr. Congiusta graduated from Colombia University with a bachelor's degree in 1996 and from Albany Medical College with a Doctor in Medicine in 2000 and is board certified in Orthopaedic Surgery.

Frank Congiusta has disclosed the following lawsuits:

Ruth Dixon vs. Frank Congiusta/Albany County Court/Malpractice
Per the applicant, this case with discontinued on 4/23/2018.

Myriam Barrios vs. Frank Congiusta, OrthopedicsNY, LLP, Rich Dalabo, St. Peter's Hospital/Albany County Court/Malpractice.
Per the applicant this case settled in February of 2020.

Margaret Layuretti-O'neil vs. Frank Congiusta and OrthopedicsNY, LLP/Columbia County Court/Malpractice
Per the applicant this case was settled on 08/11/2023.

Patricia Perella vs. Frank Congiusta, OrthopedicsNY, LLP/Greene County Court/Malpractice
Per the applicant, this case was discontinued in 2023.

Mark Coseo, M.D. has worked at OrthoNY since 2021 as a general Orthopedic Surgeon and Spine Surgeon. Prior to this, Dr. Coseo worked as an Orthopedic Surgeon at Naval Medical Center, Portsmouth from 2019-2021 and 2015-2018, and from 2018-2019 worked as the Director of Surgical Services of Navy Role 2 Expeditionary Medical Unit. Dr. Coseo graduated from Cornell University with a bachelor's degree in 2003 and from the Uniformed Services University of the Health Sciences with a Doctor of Medicine 2007. Dr. Coseo completed an internship in Orthopedic Surgery at Naval Medical Center in San Diego in 2008 and a residency in 2012. Dr. Coseo completed a fellowship in Adult and Pediatric Spine Surgery at Norton Leatherman Spine Center in 2015. Dr. Coseo is board certified in Orthopaedic Surgery.

Samuel Dellenbaugh, M.D. has worked as an Orthopedic Surgeon for OrthoNY since 2013. Dr. Dellenbaugh graduated from Princeton University with a bachelor's degree in 1996 and from Colombia College with a Doctor of Medicine in 2007. Dr. Dellenbaugh is board certified in Orthopaedic Surgery.

Dr. Dellenbaugh disclosed the following lawsuits:

Amy Nicole (Lalosa) vs. Samuel Dellenbaugh, M.D./Albany County Court/Malpractice
Per the applicant, this case settled in February 2025.

Daniel Winters vs. Samuel Dellenbaugh, M.D, OrthopedicsNY, LLP, Joseph Kraut, Chris Sczesniak/Albany County Court/Malpractice
Per the applicant, this case was discontinued on 8/28/2024.

David Dixon, M.D. has been an Orthopedic Surgeon with OrthoNY since 2003, specializing in orthopedic foot and ankle reconstruction and trauma surgery. Dr. Dixon graduated from the Holy Cross College with a bachelor's degree in 1991 and from the University of Vermont Medical School with a Doctor of Medicine in 1995. Dr. Dixon is board certified in Orthopaedic Surgery.

Dr. Dixon disclosed the following lawsuits:

Wendy Candiano vs. David Dixon, St. Peter's Hospital
Per the applicant, this case was settled in December of 2022.

Kathy Neidrauer vs. David Dixon, OrthopedicsNY, LLP/Albany County Court/Malpractice
Per the applicant, this case is still pending.

Daniel Donovan, M.D. has worked as an Orthopedic Surgeon at OrthoNY since 2018. Dr. Donovan graduated from the State University of New York College at Geneseo with a bachelor's degree in 2008, and from the State University of New York at Buffalo School of Medicine with a Doctor of Medicine in 2012. Dr. Donovan completed an Orthopaedic Surgery Residency at Mt. Sinai St. Luke's in 2017 and a Hand and Upper Extremity Surgery Microsurgery Fellowship at the University of California in August of 2018. Dr. Donovan is board certified in Orthopaedic Surgery.

Kevin Emr, M.D. is a board certified and licensed physician who performs surgical procedures in the ambulatory surgery center and participates in leadership roles in quality assurance. Dr. Emr graduated from Cornell University with a bachelor's degree in 2010 and from SUNY Upstate with a Doctor of Medicine in 2015. Dr. Emr completed an anesthesiology residency at Albany Medical Center in 2019 and a Pain Medicine Fellowship at Dartmouth Hitchcock Medical Center in 2020. Dr. Emr is board certified in Anesthesiology and Preventative Medicine.

Dr. Emr disclosed the following pending lawsuit which he has been named as a co-defendant:

Colandrea vs. Howe et. al./Albany Supreme Court/ 904218-22/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, the complaint alleges a failure to properly position the plaintiff causing bilateral lower extremity numbness, weakness, and pain. Dr. Emr was the attending anesthesiologist for the surgery and was not involved in the lower extremity positioning.

Justin Ferrara, M.D. has been a Physician Partner and Orthopedic Surgeon at OrthoNY since 2013. Prior to this, Dr. Ferrara was and Orthopedic Surgeon at Orthopaedic Associates of Saratoga from 2009-2012. Dr. Ferrara graduated from the University of Vermont with a bachelor's degree in 1996 and from Albany Medical College with a Doctor of Medicine in 2003. Dr. Ferrara is board certified in Orthopaedic Surgery.

Dr. Ferrara disclosed the following lawsuits:

CAMPBELL, JAMES vs. ORTHONY, LLC FERRARA/Saratoga Supreme Court/6000289/2021/
Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued in November of 2023.

Green vs. Shepard et al./Albany Supreme Court/ 0903400/2022/ Tort-Medical, Dental, or
Podiatric Malpractice
Per the applicant, the jury found no cause on 12/12/24.

Arciero, Paul vs. FERRARA, JUSTIN M.D., OrthopedicsNY, LLP/Saratoga County/Malpractice
Claim
Per the applicant, this case is pending.

ZEIGER, DONALD A. vs. FERRARA, JUSTIN M.D./Saratoga Supreme Court/ Tort-Medical,
Dental, or Podiatric Malpractice

Kyle Flik, M.D. has been an Orthopedic Surgeon with OrthoNY since 2005 and is also the Medical Director of Executive Woods Ambulatory Surgery Center. Dr. Flick graduated from Dartmouth College with a bachelor's degree in 1991 and from the University of Vermont with a Doctor of Medicine in 1999. Dr. Flik is board certified in Orthopaedic Surgery.

Dr. Flick disclosed the following lawsuits:

BURDO, ROBERT JR. vs. FLIK, KYLE R., M.D.; MEMORIAL HOSPITAL/Schenectady Supreme
Court/2011-0650/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 7/3/2015

ROSETTI, RICHARD G vs. ORTHOPEDICSNY, LLP/New York Supreme Court/ 805039/2015/
Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 2/21/19

Jonathan Gainor, M.D. has been an Orthopedic Surgeon for OrthoNY since 2010. Dr. Gainor graduated from Albany Medical College in 2000 with a master's degree and in 2004 with a Doctor of Medicine. Dr. Gainor is board certified in Orthopaedic Surgery.

Leonard Goldstock, M.D. is an Orthopedic Surgeon and existing owner at Executive Woods ASC, LLC. Dr. Goldstock graduated from Cornell University with a bachelor's degree in 1985 and from Albany Medical College with a Doctor of Medicine in 1989. Dr. Goldstock completed an Internship in Orthopedics at Albany Medical Center in 1990, a residency at Albany Medical Center in 1994, and a fellowship in Hand and Upper Extremity at Massachusetts General Hospital in 1995. Dr. Goldstock is board certified in Orthopaedic Surgery.

Stefanos Haddad, M.D. has been an Orthopedic Surgeon at OrthoNY for two years, completing roughly 500 surgeries at the Center in the last year. Dr. Haddad graduated from SUNY Albany with a bachelor's degree in 2011, and from SUNY Upstate Medical University with a Doctor of Medicine in 2016. Dr. Haddad completed a residency in Orthopedic Surgery at Albany Medical Center in 2021 and a fellowship at Rothman Institute Hand and Upper Extremity Surgery in 2022. Dr. Haddad is board certified in Orthopaedic Surgery.

Thomas Jackson, M.D. has been an Orthopedic Surgeon with OrthoNY since 2015. Prior to this, Dr. Jackson worked as an Orthopedic Surgeon for Sports Medicine and Injury Care at Carolinas Healthcare System from 2011 to 2015. Dr. Jackson graduated from the University of Pittsburgh with a bachelor's degree in 1998 and from Temple University School of Medicine with a Doctor of Medicine in 2002. Dr. Jackson is board certified in Orthopaedic Surgery with sub-certifications in Sport Medicine and Pain Medicine.

Dr. Jackson disclosed the following lawsuits:

SANTIAGO, CHANDRA A. AND SANTIAG vs. JACKSON, THOMAS R., MD AND ORTHONY/
Schenectady Supreme Court/0002773/2018/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was discontinued on 11/11/2019.

Walsh, Roy et al vs. OrthoNY, LLP et al/ Montgomery Supreme Court/ EF2023-188/ Tort-Medical,
Dental, or Podiatric Malpractice
Per the applicant, this case is pending.

Andre Johnson, M.D. has worked as an Orthopedic Surgeon for OrthoNY since 2023 and has been the Chairman of the Department of Surgery at Glens Falls Hospital since 2018. Prior to this, Dr. Johnson worked for North Country Sports from 2012 to 2023. Dr. Johnson graduated from Northwestern University with a bachelor's degree in 1997 and from Albany Medical College with a Doctor of Medicine in 2001. Dr. Johnson completed a residency in Orthopedic Surgery at Akron General Medical Center in 2006 and a fellowship at in Orthopedic Surgery in Sports Medicine at Nirschl Orthopaedic in 2007. Dr. Johnson is board certified in Orthopaedic Surgery.

The following lawsuits were undisclosed:

LAWSON, MICHAEL J vs. JOHNSON, ANDRE H, MD., NORTH COUNTRY/ Warren Supreme
Court/ 62552/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case settled and was closed on 7/26/17.

Lee Kaback, M.D. has worked for OrthoNY in various roles since 2013, including Urgent Care Medical Director since 2013, Executive team member since 2022, and Vice President since 2023. Dr. Kaback graduated from the University of Vermont with a bachelor's degree in 1995, from Albany Medical College with a master's degree in 1999, and from the University of Vermont with a Doctor of Medicine in 2004. Dr. Kaback completed a residency in Orthopedic Surgery at the University of Rochester in 2010 and a fellowship in arm and shoulder surgery at Brown University School of Medicine in 2011. Dr. Kaback is board certified in Orthopaedic Surgery.

Dr. Kaback disclosed the following lawsuits:

Scannapieco vs. Alfred M.D. et. al./ Albany Supreme Court/ 908628-23/Tort-Medical, Dental, or
Podiatric Malpractice
Per the applicant, this case is still pending.

Stillman vs. Kaback et. al./ Albany Supreme Court/ 904910-21/ Tort-Medical, Dental, or Podiatric
Malpractice
Per the applicant, this case settled in 2023.

Richard Katz, M.D. is an existing owner at Executive Woods ASC, LLC. Dr. Katz graduated from Vanier College in 1978 with a Diploma of collegiate studies and from McGill University with a Doctor of Medicine in 1983. Dr. Katz is board certified in Orthopaedic Surgery.

The following lawsuit was undisclosed:

Legace vs. Katz/ Albany Supreme Court/ 904113-22/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case resulted in a defense verdict in favor of Dr. Katz on 9/16/24.

Kevin Kleis, D.O. has worked as an Orthopedic Surgeon for OrthoNY since 2019. Prior to this, Dr. Kleis worked as an Orthopedic Surgeon for Riverside Orthopedic Institute from 2016 to 2019 and at Kaiser Permanente from 2014 to 2016. Dr. Kleis graduated from the Hobart and William Smith College with a bachelor's degree in 2006 and from the New York Institute of Technology College of Osteopathic Medicine with a Doctor of Osteopathic Medicine in 2011. Dr. Kleis is board certified in Orthopaedic Surgery.

Joseph LaRosa, M.D. has worked for OrthoNY as an Orthopedic Surgeon since 2013. Dr. LaRosa graduated from Plattsburgh State University with a bachelor's degree in 1983 and from Albany Medical College with a Doctor of Medicine in 1987. Dr. LaRosa is board certified in Orthopaedic Surgery.

William Montgomery, M.D. has been an Orthopedic Surgeon at OrthoNY since 2008. Dr. Montgomery graduated from the University of Vermont with a bachelor's degree in 1993, and from the University of Hawaii with a master's in public health in 1997 and with a Doctor of Medicine in 2001. Dr. Montgomery is board certified in Orthopaedic Surgery.

Dr. Montgomery disclosed the following lawsuit:

Walsh, Roy et al vs. OrthoNY, LLP et al/ Montgomery Supreme Court/ EF2023-188/ Tort-Medical, Dental, or Podiatric Malpractice

Per the applicant, this case is pending.

Michael Okoli, M.D. has worked as an Orthopedic Surgeon at OrthopedicsNY since 2022. Prior to this, Dr. Okoli was a Clinical Research Coordinator at the Department of Neuropsychiatry at the Hospital of the University of Pennsylvania from 2009 to 2012. Dr. Okoli graduated from the University of Pennsylvania with a bachelor's degree in 2009 and from the Feinberg School of Medicine/Northwestern with a Doctor of Medicine in 2016. Dr. Okoli completed an internship in Orthopaedic Surgery at Thomas Jefferson University in 2021 and a fellowship in Hand and Microsurgery at SUNY Stony Brook University Hospital in 2022. Dr. Okoli is board certified in Orthopaedic Surgery.

Amar Parikh, M.D. has worked as a Pain Management Specialist at OrthoNY since 2013. Dr. Parikh graduated from Union College with a bachelor's degree in 2004 and from Union University with a Master of Business Administration in 2005. In 2008 Dr. Parikh received a Doctor of Medicine from Albany Medical College and completed a residency and fellowship at Beth Israel Deaconess Medical Center in 2013. Dr. Parikh is board certified in Anesthesiology.

Daniil Polishchuk, M.D. has been an Orthopedic and Pain Management Provider for OrthoNY since 2014. Dr. Polishchuk graduated from Rutgers New Jersey Medical School with a Doctor of Medicine in 2011 and completed a fellowship in hip and knee reconstruction at NYOH Columbia University Medical Center in 2012. Dr. Polishchuk is board certified in Orthopaedic Surgery.

Dr. Polishchuk disclosed the following lawsuits:

Walsh, Roy et al vs. OrthoNY, LLP et al/ Montgomery Supreme Court/ EF2023-188/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case is pending.

Oliver, Debra vs. Daniil Polishchuk, M.D., OrthopedicsNY, LLP, Ellis Hospital/Schenectady County/Malpractice
Per the applicant, this case was discontinued in July 2022.

Luke Rigolosi, M.D. has worked as a pain management physician since 2005 at OrthoNY. Prior to this, Dr. Rigolosi was the Physician Director of Executive Woods ASC from 2008 to 2012 and an Executive Committee Member of OrthoNY from 2008-2016. Dr. Rigolosi graduated from Brown University with a bachelor's degree in 1995 and from New Jersey Medical School with a Doctor of Medicine in 2000. Dr. Rigolosi completed a residency at Kessler Institute for Rehabilitation in 2004 and a fellowship in Pain Management at Sinai of Baltimore via York in 2005. Dr. Rigolosi is board certified in Physical Medicine and Rehabilitation with a sub certification in Pain Medicine.

Kevin Rosas, M.D. has been an Orthopedic Surgeon at OrthoNY since 2014. Dr. Rosas graduated from Cornell University with a bachelor's degree in 1991 and from SUNY Downstate with a Doctor of Medicine in 1998. Dr. Rosas is board certified in Orthopaedic Surgery.

Dr. Rosas disclosed the following lawsuits:

CASCINI, JEFFREY vs. ROSAS, KEVIN E. MD WASACZ et al/ Schenectady Supreme Court/ 0001150/2021/ Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case was settled in July of 2023.

O'NEILL, JODY – AS PARENT OF KJO, AN INFA vs. COMMUNITY CARE PHYSICIANS, P.C. CLIFTON et al/ Saratoga Supreme Court/ 7001037/2020/ Tort-Medical, Dental, or Podiatric Malpractice
This case was discontinued in August 2024.

Laura Scordino, M.D. has been an Orthopedic Surgeon with OrthoNY since 2015. Prior to this, Dr. Scordino was a Clinical Instructor of Orthopedic Surgery Residents through Albany Medical College from 2015-2019. Dr. Scordino graduated from Binghamton University with a bachelor's degree in 2004 and from Upstate Medical University with Doctor of Medicine in 2009. Dr. Scordino is board certified in Orthopaedic Surgery.

George Silver, M.D. has been an Orthopedic Surgeon at OrthoNY since 2000. Dr. Silver graduated from Union College with a bachelor's degree in 1990 and from Georgetown University with a Doctor of Medicine in 1995. Dr. Silver is board certified in Orthopaedic Surgery.

W. James Smith, M.D. has been an Orthopedic and Hand Surgeon at Northeast Orthopedics since 2012 and is a partner/owner in this facility. Dr. Smith graduated from Boston University School of Medicine with a Doctor of Medicine in 1984. Dr. Smith is board certified in Orthopaedic Surgery with subspecialty in Hand Surgery.

Dr. Smith disclosed the following lawsuit:

Schuppe vs. Daniel J. Bowman, MD, James Smith/Schenectady Court/Malpractice Claim
Per the applicant, this case was discontinued on 9/28/18.

Tory Speert, D.O. has worked as a Pain Medicine Specialist for OrthoNY since 2017. Dr. Speert graduated from the College of New Jersey in 2008 with a bachelor's degree and from Rowan University School of Osteopathic Medicine with a Doctor of Osteopathic Medicine in 2012. Dr. Speert completed an internship at CarePoint Health in 2013, a residency at Rutgers/Kessler Institute for Rehabilitation in 2016, and a fellowship at Orthopedic and Spine Specialists in 2017. Dr. Speert is board certified in Physical Medicine and Rehabilitation.

Matthew Stein, M.D. has worked as an Orthopedic Surgeon for OrthoNY since 2015. Dr. Stein graduated from Haverford College with a bachelor's degree in 2005 and from NYU School of Medicine with a Doctor of Medicine in 2009. Dr. Stein completed a residency at USF Health in 2014 and a fellowship at Jefferson University in 2015. Dr. Stein is board certified in Orthopaedic Surgery. Dr. Stein disclosed the following lawsuits:

Dalaba, Theodore vs. Stein, Matthew, MD/Saratoga County/Malpractice Claim
Per the applicant, this case was settled on 6/27/23.

Gallo vs. OrthoNY et al./ Albany Supreme Court/905043-23/Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case is pending.

Morrissey, Kelly vs. OrthoNY et al/Saratoga Supreme Court/EF20233692/Tort-Medical, Dental, or Podiatric Malpractice
Per the applicant, this case is pending.

Adam Suslak, M.D. is an Orthopedic Surgeon and has ownership in Executive Woods ASC, LLC since 2016 and Everett Road ASC since 2018. Dr. Suslak graduated from the University of Medicine and Dentistry of New Jersey with a Doctor of Medicine in 2005. Dr. Suslak is board certified in Orthopaedic Surgery.

John Whalen, M.D. has worked as an Orthopedic Surgeon, Spine Specialist for OrthoNY since 1995. Dr. Whalen graduated from Union College in 1985 with a bachelor's degree and from Yale School of Medicine in 1989 with a Doctor of Medicine. Dr. Whalen is board certified in Orthopaedic Surgery.

Dr. Whalen disclosed the following lawsuits:

Gelais vs. John Whalen, MD, Northeast Orthopedics/Rensselaer County/Malpractice Claim
Per the applicant, this case was discontinued on 4/25/14.

Chaney vs. John Whalen, MD, Samaritan Hospital/Albany County/Malpractice Claim
Per the applicant, this case was discontinued on 3/24/24.

Bonneau vs. John Whalen, MD, Northeast Orthopedics/Albany County/Malpractice Claim
Per the applicant, this case was discontinued on 2/25/25.

The following case names OrthoNY

Sayers vs. OrthopedicsNY/Albany Supreme Court/ 911154-24/ Comm-Contract
Per the applicant, this is a class action lawsuit stemming from a potential disclosure of information due to a security incident during which cybercriminals accessed data from a portion of OrthoNY's computer network in December 2023. The lawsuit is pending.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the Current Year (2023) results, and the Year One and Year Three operating budget, in 2025 dollars. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:						
Commercial FFS	\$5,138.11	\$8,858,098	\$5,139.54	\$8,875,979	\$5,139.54	\$8,875,979
Medicare FFS	\$6,210.59	2,664,345	\$6,204.64	2,717,632	\$6,204.64	2,717,632
Medicare MC	\$6,037.98	3,604,674	\$6,037.38	3,676,767	\$6,037.38	3,676,767
Medicaid FFS	\$975.13	7,801	\$994.63	7,957	\$994.63	7,957
Medicaid MC	\$2,022.29	1,257,864	\$2,023.69	1,283,021	\$2,023.69	1,283,021
Private Pay	\$1,251.25	5,005	\$1,276.25	5,105	\$1,276.69	5,105
All Other ¹	\$4,668.59	653,603	\$4,662.06	666,675	\$4,662.06	666,675
Total Revenue		<u>\$17,051,390</u>		<u>\$17,233,136</u>		<u>\$17,233,136</u>
Expenses:						
Operating	\$3,473.12	\$12,239,284	\$3,534.45	\$12,851,247	\$3,583.96	\$13,031,273
Capital	<u>515.17</u>	<u>1,815,449</u>	<u>499.30</u>	<u>1,815,449</u>	<u>499.30</u>	<u>1,815,449</u>
Total Expenses	<u>\$3,988.29</u>	<u>\$14,054,733</u>	<u>\$4,033.75</u>	<u>\$14,666,696</u>	<u>\$4,083.26</u>	<u>\$14,846,722</u>
Net Income/(Loss)		\$2,996,657		\$2,566,440		\$2,386,414
Procedures		3,524		3,636		3,636
Cost/Procedure		\$3,988.29		\$4,033.74		\$4,083.26

¹ All Other includes Workers Compensation, No Fault and Government.

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

	<u>Procedures</u>	<u>Current Year</u>	<u>Procedures</u>	<u>Year One</u>	<u>Procedures</u>	<u>Year Three</u>
Commercial FFS	1,724	48.92%	1,727	47.50%	1,727	47.50%
Medicare FFS	429	12.18%	438	12.04%	438	12.05%
Medicare MC	597	16.94%	609	16.75%	609	16.75%
Medicaid FFS	8	0.23%	8	0.22%	8	0.22%
Medicaid MC	622	17.65%	634	17.44%	634	17.44%
Private Pay	4	0.11%	4	0.11%	4	0.11%
Charity Care	0	0.00%	73	2.01%	73	2.01%
All Other	<u>140</u>	<u>3.97%</u>	<u>143</u>	<u>3.93%</u>	<u>143</u>	<u>3.93%</u>
Total	3,524	100.00%	3,636	100.00%	3,636	100.00%

The following is noted with respect to the submitted budget:

- The Current Year reflects the Center's 2023 cost report.
- Current Year staffing reflects 2023 staffing levels and utilizes 2023 AHCF cost report data. No change is expected in Year One and Year Three.
- Years One and Year Three project a conservative increase in utilization, expense and revenue, based on the Center's historical performance.
- Years One and Year Three reimbursement rates reflect the Center's actual 2023 rates.
- Medicare Managed Care revenues is based upon the Center's actual 2023 rates.
- The Center confirms that no Charity Cases were provided in 2023. The applicant projects 2% Charity Care utilization for Years One and Year Three.
- The decrease in net income is attributed to a change in payor mix. From the Current Year through Year Three, there is a decrease in the proportion of Commercial procedures and an increase in the proportion of Charity Care procedures.

Executed Lease Agreement

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

Date:	September 28, 2018
Premises:	123 Everett Road, Albany, New York, 12205
Landlord:	123 Everett Road Real Estate Group LLC
Tenant:	Everett Road ASC, LLC d/b/a Everett Road Surgery Center
Term:	15 Years with two (2) separate consecutive 5-year renewal
Rent:	\$462,420 (\$38,535 per month)
Provisions:	Tenant is responsible for insurance and utilities

The lease between the property owner and the lessee is a non-arm's length arrangement due to common ownership.

Amended and Restated Administrative Service Agreement

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

Date:	February 19, 2025
Operator:	Everett Road ASC, LLC
Contractor:	OrthopedicsNY, LLP
Services Provided:	Provide financial management services, including budget preparation, bookkeeping, bank account reconciliation, account payable, account receivable management and financial analysis. Provide monthly reports of revenue/expense with budget variance analysis for review. Establishing, monitoring, and presenting key performances indicators monthly. Generate required financial and operational reports including DOH/SPACS data files, pool reports and cost reporting. Provide support for Operator's maintenance of its EHR and Practice Management Software system. Establish and maintain Operator's IT network infrastructure, including IT security procedures. Aid Operator with respect to human resources management and recruitment, interviewing and evaluation of staffing candidates. Supervising, coordinating, and facilitating the performance of operator's annual strategic planning functions for the Center including an annual meeting of the governing body. The parties mutually agree in writing to carry out other functions.
Term:	10 years with automatic five (5) year renewals
Fee:	\$400,000 per year (\$33,333 per month), the fee will increase by three percent (3%) of the preceding 12-month period

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not

willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Unit Redemption Agreement

The applicant has submitted executed Unit Redemption Purchase Agreements as summarized below:

Date:	December 13, 2024
Purchaser:	OrthoNY ASC Holdings, LLC
Seller:	Frederick Fletcher, M.D.
Sold:	Frederick Fletcher, M.D., will sell 5.263% of his OrthoNY ASC Holdings, LLC membership.
Consideration:	\$225,000 to be funded by the current 18 individual owners of OrthoNY ASC Holdings, LLC., at \$12,500 each (18 X \$12,500 = \$225,000)

OrthoNY Master ASC Holdings, LLC Unit Purchase Agreements

The applicant has submitted six (5) executed OrthoNY Master ASC Holdings, LLC Unit Purchase Agreements as summarized below:

Dates:	January 15, 2025, February 5, 2025, and February 10, 2025
Purchaser:	Adam Brod M.D.; Kevin Emr M.D.; Stefanos Haddad M.D.; Andre Johnson M.D. and Michael Okoli, M.D.
Seller/Company:	OrthoNY Master ASC Holding, LLC
Purchase:	Each will purchase 2.632% interest in OrthoNY Master ASC Holding, LLC
Purchase Price:	Each has placed \$400,000 in escrow

Amended and Restated OrthoNY Master ASC Holdings, LLC Unit Purchase Agreement

The applicant has submitted an executed amended and restated OrthoNY Master ASC Holdings, LLC Unit Purchase Agreement as summarized below:

Date:	December 31, 2024
Purchaser:	Mark Coseo M.D.
Seller/Company:	OrthoNY Master ASC Holding, LLC
Purchase:	Purchaser previously agreed to purchase a 3.03% interest in OrthoNY Master ASC Holdings, LLC. The Company amended the agreement to sell a 2.632% interest in OrthoNY Master ASC Holdings, LLC.
Purchase Price:	\$400,000 has been placed in escrow

Contribution, Exchange, and Distribution Agreement - OrthoNY Master ASC Holdings, LLC (aka ASC Holdings)

The applicant has submitted an executed Contribution, Exchange and Distribution Agreement- OrthoNY Master ASC Holdings, LLC (relates to CON 251118, 251131, and 251147) as summarized below:

Date:	December 13, 2024
Contributors:	OrthoNY Master ASC Holdings, LLC
Company:	OrthoNY Master ASC Holdings, LLC
Contributed Equity:	CON 251147 Everett Road ASC, LLC (ERASC) CON 251118 Executive Woods Ambulatory Surgery Center, LLC (EWASC) CON 251131 Clifton Part ASC, LLC (CPASC)
Agreed Value of Capital Contributions	\$3,780,202.97 from 32 physician members ($\$3,780,202.97 \times 32 = \$120,966,495$)
Cash Payments:	OrthoNY Master ASC Holdings, LLC will pay \$223,777.55 to 14 CPASC contributor physician members, totaling \$3,132,885. ($\$223,777.55 \times 14 = \$3,132,885$)
Funded:	All 38 proposed OrthoNY Master ASC Holdings, LLC members will share equally in funding the \$3,132,885 to the 14 CPASC contributor owners. Each will pay \$82,444.34 ($38 \times \$82,444.34 = \$3,132,885$)

Contribution, Exchange, and Distribution Agreement – OrthopedicsNY, LLP (aka OrthoNY)

The applicant has submitted an executed Contribution, Exchange and Distribution Agreement- OrthopedicsNY, LLP (relates to CON 251118, 251131, and 251147) as summarized below:

Date:	December 13, 2024
Contributors:	OrthopedicsNY, LLP
Company:	OrthopedicsNY LLP
Contributed Equity:	CON 251147 Everett Road ASC, LLC (ERASC) CON 251118 Executive Woods Ambulatory Surgery Center, LLC (EWASC) CON 251131 Clifton Part ASC, LLC (CPASC)
Agreed Value of Capital Contributions	\$1,260,067.66 from 32 physician members ($\$1,260,067.66 \times 32 = \$40,322,165$)
No Cash Payments (Value assigned for tax purposes and accounting):	OrthoNY is paying \$756,785.07 to 32 physician members for a total of \$24,217,123 ($\$756,785.07 \times 32 = \$24,217,123$)

Capability and Feasibility

There are no project costs or service charges associated with this application. OrthoNY ASC Holding, LLC will pay Dr. Fletcher \$225,000 to redeem his 5.263% membership interest in OrthoNY ASC Holding, LLC. Six new physician members will each pay \$400,000 for 2.632% membership in OrthoNY Master ASC Holdings LLC. Their payments are held in escrow. The applicant submitted two (2) contribution, exchange and distribution agreements, one for OrthoNY Master ASC Holding members and one for Orthopedics NY LLP. These agreements account for the current members of the OrthoNY's equity contribution into the new member organizations. There was a cash value assigned to these equity contributions but no cash changed hands and the cash value was used solely for book keeping purposes.

The working capital requirement, estimated at \$2,444,449 based on two months of Year One expenses, will be met with equity from operations and, if necessary, its members. BFA Attachment A, Net Worth Statement of Proposed Members, and BFA Attachment I, 2023 Certified Financial Statements and Financial Statement and December 31, 2024, Internal Financial Statement of Everett Road ASC, LLC, show sufficient resources to meet the equity requirements.

The submitted budget projects a net income of \$2,566,440 and \$2,386,414, in Year One and Year Three respectively. The budget appears reasonable.

BFA Attachment I shows a positive working capital position, positive net asset position, and a net income of \$3,106,237 in 2023 and a \$4,485,990 net income as of December 31, 2024.

BFA Attachment H, Everett Road LLC Pro Forma Balance Sheet, shows operations will have \$2,466,976 in members' equity as of the first day of operations.

Conclusion

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

Attachments

BFA Attachment A	Everett Road ASC, LLC – Net Worth of Proposed Members
BFA Attachment B	Everett Road ASC, LLC – Current Members
BFA Attachment C	OrthoNY ASC Holdings, LLC – Current Members Direct Ownership Interest
BFA Attachment D	OrthoNY Master ASC Holdings, LLC – Proposed 38 Members Direct Ownership Interest
BFA Attachment E	OrthoNY Master ASC Holdings, LLC – Proposed 38 Members Indirect Ownership Interest in Executive Woods Ambulatory Surgery Center, LLC
BFA Attachment F	OrthopedicsNY LLP - Proposed 33 Members Direct Ownership Interest
BFA Attachment G	OrthopedicsNY LLP - Proposed 33 Members Indirect Ownership Interest in Everett Road ASC, LLC
BFA Attachment H	Everett Road ASC, LLC - Pro Forma
BFA Attachment I	Everett Road ASC, LLC – 2023 Certified Financial Statement and Financial Statement and December 31, 2024, Internal Financial Statement
BFA Attachment J	Everett Road ASC, LLC – Current and Post-Transaction Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 66% of ownership interest from one withdrawing member to two new corporate members with no change of operator, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

251147 E

FACILITY/APPLICANT:

Everett Road Surgery Center

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 241290-E
Elmira Community Health

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Chemung
Acknowledged: October 9, 2024

Executive Summary

Description

Cayuga Community Services, Inc. (CCS), an existing New York 501(c)(3) non-profit corporation, requests approval to be established as the operator of a previously approved Article 28 Diagnostic and Treatment Center (D&TC) at 200 Madison Avenue Elmira, NY (Chemung County). The space is currently owned and operated by Arnot Ogden Medical Center (AOMC) as a hospital extension clinic. The site will be known as Elmira Community Health.

CCS will lease the space and be certified for Medical Services – Primary Care, including screenings, family planning, immunizations, well-child services, basic gynecological care and behavioral health services below the 30% threshold. Future services will be determined as the need arises. The goal is to enhance access to office-based clinical care, keeping patients out of emergency rooms and urgent care centers, thereby improving patient satisfaction and quality of care.

AOMC is a 266-bed voluntary not-for-profit corporation at 600 Roe Avenue, Elmira. CCS intends to implement a Federally Qualified Health Center (FQHC) model in place of the current primary care model and change the name to Elmira Community Health.

Michael Leon Berlin, M.D. will serve as the Medical Director. CCS will enter into a transfer and affiliation agreement for backup and

emergency services with Arnot Ogden Medical Center 2.3 mile/9 minutes away.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 43,336 visits in Year One and 45,569 visits in Year Three, with 49.51% Medicaid in Year One and 50.06% Medicaid in Year Three of operations, with no Charity Care.

Program Summary

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

Financial Summary

There are no project costs or purchase agreements associated with this application.

Budget:	Year One	Year Three
Revenues	\$4,295,738	\$6,754,663
Expenses	\$3,927,329	4,140,946
Net Income / (Loss)	\$368,409	\$2,613,717

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency, Common Ground Health, recommends Approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan agreement acceptable to the Department. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

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

Council Action Date

June 18, 2025

Need Analysis

Project Description

Cayuga Community Services (CCS), a 501(c)(3) not-for-profit organization formed in February of 2019, is seeking approval to be established as the operator of a Diagnostic and Treatment Center (D&TC) currently operated as a hospital extension clinic by Arnot Ogden Medical Center at 200 Madison Avenue, Elmira, NY 14901. The new name of the site will be Elmira Community Health. The facility will be certified for Medical Services – Primary Care. CCS plans to offer primary medical care, screenings, family planning, immunizations, well-child services, and basic gynecological care, as well as other select medical specialty services. Future services will be determined as the need arises.

Background and Analysis

The primary service area for this project comprises zip codes 14901, 14903, 14904, 14905, 14845, and 14871 in Chemung County. The address is in a Health Professional Shortage Area for Primary Care and Mental Health and within a Medically Underserved Area. The population of Chemung County is projected to decrease to 81,922 by 2030 according to the Cornell Program on Applied Demographics, a 1.06% decrease. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	PSA – (ZC 14901, 14903,14904, 14905,14845, 14871)	Chemung County	New York State
Total Population	70,440	82,805	19,872,319
Hispanic or Latino (of any race)	3.4%	3.6%	19.6%
White (non-Hispanic)	84.3%	84.5%	53.4%
Black or African American (non-Hispanic)	6.02%	5.8%	13.6%
Asian(non-Hispanic)	1.42%	1.5%	8.8%
Other (non-Hispanic)	4.37%	4.6%	4.6%

Source: 2023 American Community Survey (5-Year Estimates Data Profiles)

In 2023, 95.7% of the population of Chemung County had health coverage as follows:

Health Plans	Chemung County
Employer plans	43.3%
Medicaid	23.3%
Medicare	13.9%
Non-group plans	13.9%
Military or VA plans	1.20%

Source: Data USA

Based on the primary service area of the six specified zip codes within Chemung County, the following data represents the public health coverage of the area:

	Zip Code 14901	Zip Code 14903	Zip Code 14904	Zip Code 14905	Zip Code 14845	Zip Code 14871
Medicare Coverage Alone	4.5%	6.0%	6.4%	3.6%	6.7%	10.1%
Medicaid/Mean-Tested Coverage Alone	34.4%	16.5%	25.8%	20.2%	10.0%	10.0%

Source: 2023 American Community Survey (5-Year Estimates): Table S2704

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	27.88%	27.57%
Medicare	13.87%	13.71%
Medicaid	49.51%	50.06%
Private Pay	7.71%	7.63%
All Other	1.04%	1.02%
Charity Care	0%	0%

Source: Applicant

The applicant projects 43,336 visits in Year One and 45,569 visits in Year Three for the proposed facility.

According to the applicant, they will offer a sliding fee program for self-pay patients. These patients will be asked to pay a nominal fee based upon a percentage of the federal poverty level for each year.

The applicant has a transfer and affiliation agreement with Arnot Ogden Medical Center, 2.6 Miles and 7 Minutes away. The hours of operation proposed are 8:30 am-5:00 pm, Monday through Friday.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2022 related to this application.

Hospital Admissions per 100,000 Adults		
PQI Name	Chemung County	New York State
Diabetes Short-Term Complications	96	67
Diabetes Long-Term Complications	80	116
Chronic Obstructive Pulmonary Disease or Asthma	380	238
Hypertension	47	65
Heart Failure	428	359
Bacterial Pneumonia	196	92
Uncontrolled Diabetes	40	46
Urinary Tract Infection	124	103
Prevention Quality Overall Composite	1,285	1,021

Source: Health. Data. NY. Gov

Conclusion

Approval of this project will allow access to extended medical services for residents of Chemung County.

Program Analysis

Project Proposal

Proposed Operator	Elmira Community Health
To Be Known As	Elmira Community Health
Site Address	200 Madison Avenue, Elmira, New York 14901 (Chemung County)
Services	Medical Services - Primary Care
Hours of Operation	Monday - Friday 8:30 am to 5:00 pm
Staffing (1st Year / 3rd Year)	31.1 FTEs in Year One and Year Three
T&A: Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be with Arnot Ogden Medical Center 2.3 Miles / 9 Minutes

The table below shows the projected FTEs will remain unchanged from the Current Year to Year Three after completion of this project.

Staffing Categories	Current Year	First Year	Third Year
Management & Supervision	2.6	2.6	2.6
Technician and Specialist	1.0	1.0	1.0
Registered Nurses	1.0	1.0	1.0
Licensed Practical Nurses	5.4	5.4	5.4
Aides, Orderlies & Attendants	6.8	6.8	6.8
Physicians	5.6	5.6	5.6
Social Workers and Psychologist**	1.5	1.5	1.5
Other - Assistant Physicians (AP)	1.0	1.0	1.0
Clerical and Administrative	6.2	6.2	6.2
Totals Numbers of Employees	31.1	31.1	31.1*

* CCS budgeted to add additional FTE physicians to its operations to better accommodate the patients' demand for primary care services. Staffing predictions is currently based upon current operations at Eastside PC, Eastside WIC, and Elmira Pediatrics Clinics in and around Elmira, N.Y.

Two (2) additional Primary Care Physicians FTE's will be added after the conversion.

The members of Elmira Community Health are:

Name: Elmira Community Health	Ownership Interest
Martin Stallone / Director	N/A
Robert M. Lawlis / Director-Treasurer	N/A
Michael Berlin, MD / Director-Secretary - proposed Medical Director	N/A

Derrick Murray, as the Chief Executive officer (CEO), will manage and be responsible for financial decisions for Elmira Community Health; and Stensys and Cayuga Health Services will provide administrative services.

Character and Competence

Micheal Leon Berlin, MD is the proposed Medical Director for Elmira Community Health. Dr. Berlin was the Founding Director for the Internal Medicine Residency Training Program at Cayuga Medical Center and acted in an executive role for implementing the health system's strategy in development and execution.

Dr. Berlin completed a Master's in Business Administration from Cornell University in New York in May 2022; received a Medical Degree from Yeshiva University-Albert Einstein College of Medicine in New York in 2014; completed an Internship and Residency in Internal Medicine at New York Presbyterian - Weill Cornell Medical College in New York in 2014; and completed a Bachelor of Science in Chemistry degree from Skidmore College in New York in 2008. Dr. Berlin was re-certified by the American Board of Internal Medicine in 2024.

Currently, Dr. Berlin is an attending physician at Cayuga Medical Center at Ithaca since 2015; is an attending physician at Weill Cornell Medical College since 2015; is a Clinical Assistant Professor of Medicine at Cayuga Medical Center; is an Adjunct Clinical Assistant Professor at Lake Erie College of Osteopathic Medicine since 2019; is a hospitalist at Cayuga Medical Associates since 2014; is the founding program director / Internal Medicine Residency of Cayuga Medical Center 2017 - 2020; is an affiliate site Dean at Weill Cornell Medical College since 2019; is a designated Institutional Official at Cayuga Medical Center since 2019; was an Associate Program Director/Internal Medicine Residency at Cayuga Medical Center from 2020 - 2023; is an Assistant Vice President/Strategy Planning and Business Development at Cayuga Medical Center since 2022; and was an Interim Program Director - Internal Medicine Residency from 2023 - 2024 at Cayuga Medical Center.

Robert M Lawlis received a Master's degree in English from Cornell University in New York in 2009; completed a Bachelors in Administration from the University of Maine in Maine in 2008; and completed Associates degree from Bard College at Simon's Rock in Massachusetts in 2004.

Robert Lawlis is the Chief Executive Officer (CEO) for Cayuga Health Partners (CHP) since 2018; and was the Executive Director for Cayuga Health Partners from 2013 to 2018; was a committee chairperson with Care Compass Network (CCN) / ITT from 2014 to 2021; and was a board member from 2015 to 2021.

Dr. Martin Stallone is the President and Chief Executive Officer (CEO) of Cayuga Health Services and will become the President and CEO of Centralus Health (pending approval of CON project #241015). Dr. Stallone is a director at affiliated organizations as well. Dr. Stallone graduated from the Naval War College, in Rhode Island, with a Master's in 2009; received a MD/MBA degree from the University of Pennsylvania School of Medicine, in Pennsylvania, in 2004; and completed a Bachelor of Science degree from Cornell University, in New York, in 1998.

Dr. Stallone is currently working at Cayuga Medical Center at Ithaca (CMC) in a variety of roles, and for the Cayuga Health System (CHS) as the President and as Chief Executive Officer (CEO) from 2019 to present; as the Vice President of Physician Operations (VPPO) from 2017 to 2019; Cayuga Medical Associates, P.C (CMA) as President from 2017 to present; and as Medical Director at Cayuga Area Plan/Preferred (CAP) from 2011 to 2019 as the Medical Director at Cayuga Medical Center (CMC) at Ithaca from 2009 to 2017.

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

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for Year One and Year Three, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2023</u>		<u>2025</u>		<u>2027</u>	
<u>Revenues:</u>	<u>Per Visit</u>	<u>Total Rev.</u>	<u>Per Visit</u>	<u>Total Rev.</u>	<u>Per Visit</u>	<u>Total Rev.</u>
Commercial FFS	\$87.26	\$1,033,548	\$157.88	\$1,907,348	\$157.88	\$1,983,643
Medicare FFS	\$98.00	\$577,318	\$112.00	\$673,008	\$152.00	\$949,840
Medicaid MC	\$72.00	\$1,479,240	\$72.00	\$1,544,832	\$159.00	\$3,627,464
Private Pay	\$44.00	\$144,100	\$45.00	\$150,345	\$45.00	\$156,359
All other	\$48.29	<u>\$21,294</u>	\$45.00	<u>\$20,205</u>	\$79.99	<u>\$37,357</u>
Total Rev.		\$3,255,500		\$4,295,738		\$6,754,663
 <u>Expenses:</u>						
Operating	\$75.86	\$3,185,850	\$82.15	\$3,560,254	\$82.82	\$3,773,871
Capital	\$0.00	\$0	\$8.47	\$367,075	\$8.06	\$367,075
Total Operating Expenses	\$75.86	<u>\$3,185,850</u>	\$90.63	<u>\$3,927,329</u>	\$90.87	<u>\$4,140,946</u>
Net Income (Loss)		<u>\$69,650</u>		<u>\$368,409</u>		<u>\$2,613,717</u>
Total Visits		41,996		43,336		45,569
Cost per Visit		\$75.86		\$90.63		\$90.87

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

	<u>Current Year</u>	<u>Years One</u>	<u>Year Three</u>
Commercial FFS	28.20%	27.88%	27.57%
Medicare FFS	14.03%	13.87%	13.71%
Medicaid MC	48.92%	49.51%	50.06%
Private Pay	7.80%	7.71%	7.63%
All Other	<u>1.05%</u>	<u>1.04%</u>	<u>1.02%</u>
Total	100.00%	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The number and case mix of staff were determined from the current operations of Arnot Ogden.
- Revenues were determined using the current rates received. CCS will renegotiate the commercial rates for current commercial services.
- Year Three Medicaid MC projections are based on attaining FQHC status and increasing reimbursement rates.
- Expenses are based on the facility's current operations.
- Utilization is based on the current caseload of the physicians who've committed to perform currently at Arnot Ogden.
- Revenue increases between Year One and Year Three can be due to increased evening and weekend hours by. The applicant expects to hire additional physicians and midlevel staff to see patients. They will see patients 7 hours a day more, 5-6 days a week.
- The addition of behavioral health staff for medication management will allow physicians to see more patients

Lease Agreement

The applicant has submitted a draft lease agreement, summarized below:

Date:	TBD
Premises:	Second floor of a building located on 200 Madison Avenue, Elmira, 14901
Landlord:	Arnot Ogden Medical Center
Tenant:	Cayuga Community Services, Inc.
Term:	5 years with an option of both parties to extend.
Rental:	Base rent for total leased space is \$27,075 per year \$2,256.25 per monthly for the 1st year. Rent will increase no more than 3% of the base year rent, but also depend on the consumer price index.
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities and maintenance fees thru additional rent.

The applicant has submitted an affidavit stating the lease between the property owner and the lessee is an arm's length arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Capability and Feasibility

There is no project cost or purchase price associated with this application.

The working capital requirement is estimated at \$654,555, based on two months of first year expenses. The working capital requirement will be funded by a \$337,780 gift from Cayuga Health System and a \$316,775 loan from Cayuga Health System. The CFO of Cayuga Health System has submitted a letter of intent for the gift, and a loan letter of interest for \$1,500,000 for a 3-year term with an interest rate estimated at 4.33%.

The submitted budget projects a net income of \$368,409 and \$2,613,717 in Year One and Year Three, respectively.

BFA Attachment A, 2022-2023 Certified Financial Statements of Cayuga Health System Inc., show the entity maintained a positive working capital position in 2022 and a negative working capital position in 2023. The entity achieved a positive net asset position in both years. During 2022 and 2023, the facility experienced operating losses of \$5,378,343 and \$28,367,785, respectively. Losses were due to supply cost increases, workforce shortages, increased salaries, and increased travel costs due to the COVID-19 pandemic.

BFA Attachment B, 2024 Internal Financial Statements of Cayuga Health System, Inc., show the entity maintained a negative working capital position, positive net asset position and incurred an operating loss of \$15,704,315. They continue to see losses due to staffing costs increase and reimbursement rates not keeping up with inflationary costs.

BFA Attachment C, Pro Forma Balance Sheet – Elmira Community Health, shows the entity will have \$337,780 in equity as of the first day of operations.

Conclusion

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

Attachments

HSA Attachment A	Common Ground, Finger Lakes Health Service Agency Review
BHFP Attachment	Map
BFA Attachment A	2022-2023 Certified Financial Statements - Cayuga Health System, Inc.
BFA Attachment B	2024 Internal Financial Statements - Cayuga Health System, Inc
BFA Attachment C	Pro Forma Balance Sheet for Elmira Community Health

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Cayuga Community Services, Inc. as the new operator of a hospital extension clinic currently owned by Arnot Ogden Medical Center at 200 Madison Avenue, Elmira, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

241290 E

FACILITY/APPLICANT:

Elmira Community Health

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan agreement acceptable to the Department. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 231220-E

CLRNC Operating, LLC d/b/a Clinton County Nursing Home

Program: Residential Health Care Facility
Purpose: Establishment

County: Clinton
Acknowledged: June 8, 2023

Executive Summary

Description

CLRNC Operating, LLC, a New York limited liability company, requests approval to be established as the new operator of Clinton County Nursing Home (CCNH). CCNH is an 80-bed municipal corporation, Article 28 residential health care facility (RHCF) at 16 Flynn Avenue, Plattsburg (Clinton County). Upon approval, the facility will be named Clinton Rehabilitation and Nursing Center.

On February 7, 2023, the County of Clinton entered into an Operations Transfer and Surrender Agreement (OTA) with CLRNC Operating, LLC, which will assume the RHCF operations. On September 11, 2024, the parties to the Agreement executed an Amendment to OTA, eliminating the Stay Bonus under Section 2.5 (d). Concurrently, the County of Clinton entered into a Contract of Sale with CLRNC Realty LLC to sell and acquire the real property for \$5,500,000. On September 19, 2024, the parties to the Agreement executed an Amendment to the Contract of Sale, reducing the purchase price to \$2,000,000 under Section 2.1 (a). The applicant will lease the premises from CLRNC Realty, LLC through a non-arms-length agreement.

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

Current Operator

County of Clinton
(A Municipal Corporation)

Proposed Operator

CLRNC Operating, LLC

Members:

Lisa Kaplewicz*	50%
Israel Ostrovitsky	50%

* Managing Member

The applicant members are currently under review seeking approval to acquire the operating interest in Wells Nursing Home, Inc., a 100-bed RHCF with a 22-slot ADHCP in Fulton County (CON 232241).

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. As of February 5, 2025, the facility reported 88.4% occupancy of staffed beds and Clinton County had 95.7% occupancy of staffed beds.

Program Summary

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

Health Equity Impact Assessment

A Health Equity Impact Assessment was not required for this project under Public Health Law §2802-B, as it was received by the Department on May 5, 2023.

Financial Summary

There are no project costs associated with this application. There is no purchase price for the operations. CLRNC Realty, LLC will purchase the real property for \$2,000,000, funded with \$500,000 in members' equity and a \$1,500,000 fixed-rate loan for 5 years with a 5-year option at 8% amortized over 25 years. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$7,089,117	\$7,474,612
Expenses:	<u>7,102,324</u>	<u>7,102,324</u>
Net Income:	(\$13,207)	\$372,288

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed building lease agreement acceptable to the Department of Health [BFA]
3. Submission of an executed real property loan commitment acceptable to the Department of Health [BFA]
4. Submission of an executed working capital loan commitment acceptable to the Department of Health [BFA]

Approval conditional upon:

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

Council Action Date

April 10, 2025

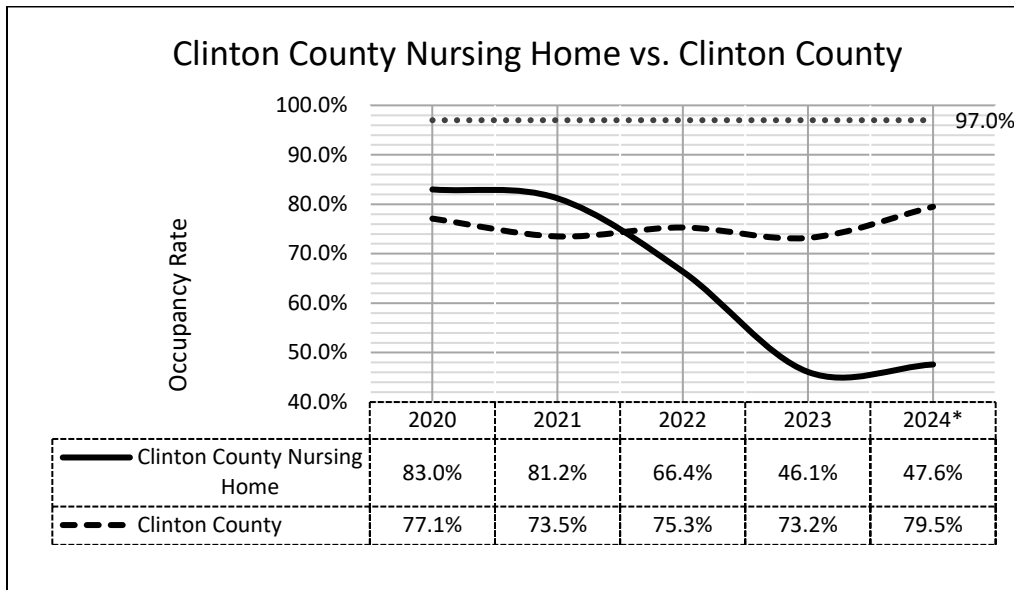
Need Analysis

Background and Analysis

The primary service area is Clinton County, which has a population projected to increase to 81,292 by 2030 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Clinton County	New York State
Total Population (2023 Estimate)	78,961	19,872,319
Hispanic or Latino (of any race)	3.4%	19.6%
White (non-Hispanic)	89.1%	53.4%
Black or African American (non-Hispanic)	2.90%	13.6%
Asian(non-Hispanic)	1.40%	8.8%
Other (non-Hispanic)	3.0%	4.6%

Source: ACS 5-Year Estimates Data Profiles



*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHCF cost reports.

Based on weekly census data, the facility reported that 53.8% of their 80 licensed beds are staffed and 47.5% occupied as of February 5, 2025, for an 88.4% occupancy of staffed beds. Clinton County had 82.2% of the county's 490 licensed beds staffed and 79.4% occupied for a 95.7% 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. The applicant is planning to hire staff and begin taking new admissions. The new operator anticipates improvements in occupancy by improving the clinical care programs and increasing the overall level of care on an ongoing basis.

The table below shows the CMS Rating and the utilization of the closest RHCFs to Clinton County Nursing Home in New York State. The next three closest RHCFs are located in Vermont.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCs	Occupancy			
	As of 1/2025		Miles/Time	2021	2022	2023	2024*
Clinton County Nursing	2	80	0 miles/0 mins	81.2%	66.4%	46.1%	47.6%
Plattsburgh Rehab	1	89	0.4 miles/1 min	76.9%	82.9%	89.1%	90.6%
Champlain Valley	4	34	2.3 miles/7 mins	60.6%	98.6%	98.6%*	98.1%
Meadowbrook Healthcare	1	287	2.5 miles/7 mins	72.7%	72.7%	75.8%	81.7%

Source: CMS and RHC cost report

*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHC's cost reports

The following table provides the Case Mix Index (CMI) for the facility and surrounding RHCs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Clinton County Nursing	0.801	0.781	0.8152	0.8036	0.8345	0.82
Plattsburgh Rehab	1.354	1.27	1.315	1.4235	1.3332	1.3455
Champlain Valley	1.062	0.825	1.106	0.7739	1.2714	0.7597
Meadowbrook Healthcare	1.225	1.224	1.195	1.2457	1.2036	1.3879

Source: RHC Cost Report

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Clinton County rate for the years 2021 through 2023.

Medicaid Access	2021	2022	2023
Clinton County Total	19.7%	22.9%	33.3%
Clinton Threshold Value	14.8%	17.2%	25.0%
Clinton County Nursing Home	37.5%	70.8%	87.5%

Source: RHC Cost Report

Conclusion

There will be no changes to beds or services as a result of this application. The facility reported 53.8% of its 80 licensed beds staffed and 47.5% occupied on February 5, 2025, for an 88.4% occupancy of staffed beds. Clinton County had 82.2% of the county's licensed beds staffed and 79.4% occupied for a 95.7% occupancy of staffed beds.

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	Clinton County Nursing Home	Clinton Rehabilitation and Nursing Center
Address	16 Flynn Avenue, Plattsburgh, New York 12901	Same
RHCF Capacity	80 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Municipal (County)	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Clinton	CLRNC Operating LLC <u>Membership:</u> Lisa Kaplewicz* 50% Israel Ostrovitsky 50% <i>*Managing Member</i>

Character and Competence

Israel Ostrovitsky lists employment as Controller at Personal Healthcare (PHC), a senior care management company, in Tarrytown, NY. Israel holds a bachelor's degree in accounting from Touro College and is a New York State licensed certified public accountant. Israel Ostrovitsky discloses the following healthcare facility ownership interest:

New York Nursing Home
Wells Nursing Home Inc (50%)

Pending

Lisa Kaplewicz lists employment as Corporate Director of Clinical Services at Personal Healthcare (PHC), a senior care management company, in Tarrytown, NY. In that role, Lisa also provides coverage as a Regional Nurse. Previously, Lisa was a Regional Nurse at Personal Healthcare and Director of Nursing Services at Tarrytown Hall Care Center, Tarrytown, NY. Lisa holds a master's degree in nursing from the University of Cincinnati and is a New York State licensed registered professional nurse. Lisa Kaplewicz discloses the following healthcare facility ownership interest:

New York Nursing Home
Wells Nursing Home Inc (50%)

Pending

A review was conducted to ensure that the applicants had adequate relevant experience. Lisa Kaplewicz has been the Corporate Director of Clinical Services at Personal Healthcare since September 2017 and oversees 21 facilities in that role. Previously, Lisa was Regional Nurse at Personal Healthcare from December 2011 to September 2017 and Director of Nursing Services at Tarrytown Hall Care Center from April 2006 to December 2011. Israel Ostrovitsky has been the Controller at Personal Healthcare since July 2012 and oversees 21 facilities in that role.

As per 10 NYCRR §600.2, regarding requisite experience, the applicant provided the following:

Lisa Kaplewicz, the Corporate Director of Clinical Services at Personal Healthcare (PHC) effectively manages the complex and overlapping responsibilities of overseeing 21 facilities, assuming increased duties as a Regional Nurse at times and will continue the strategies outlined below in handling the new challenges posed by the ownership of a financially struggling facility with a two-(2)-star CMS rating. Lisa Kaplewicz leverages data platforms like Point Click Care and Simple LTC to monitor, manage, and improve clinical operations across the 21 PHC facilities while balancing Regional Nurse duties when warranted and scheduling on-site visits. By focusing on real-time analytics, QAPI-driven initiatives, and

flexible in-person and virtual meetings, Lisa Kaplewicz ensures compliance, drives quality improvements, and facilitates the turnaround of the newly acquired facility.

As Controller, Israel Ostrovitsky is responsible for assisting with the business office operations of the above facilities, including collaborating with accounts receivable, accounts payable, payroll, and accounting departments, as well as reviewing reimbursement rates, analyzing financial statements, and dealing with financial institutions for loans and mortgages. These responsibilities do not include any involvement with clinical operations. Nevertheless, during his tenure, and through the use of standards of efficiency and coordination that Israel has put in place, a number of facilities that were economically troubled prior to the changes of ownership that brought them into the group of facilities with which Personal Healthcare is involved have stabilized, despite the severe challenges faced during COVID and generally given the rural/Upstate location of many of these facilities.

Quality Review

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

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Lisa Kaplewicz	0	0	N/A	0	N/A
Israel Ostrovitsky	0	0	N/A	0	N/A

*Duration of Ownership as of 4/10/2025

Data date: 01/2025

The proposed owners have disclosed they have no ownership interest in healthcare facilities. The following information is being presented for informational purposes related to the healthcare facilities in which the proposed owners have claimed experience as employees of Personal Healthcare LLC. The following information is not subject to star rating portfolio assessment under 10 NYCRR §600.2(b)(5)(iv).

New York. The proposed owners have experience with 18 facilities in New York. Six facilities have a CMS overall quality rating of average or higher. 12 facilities have a CMS overall quality rating of below average or much below average.

Dunkirk Rehab & Nursing Center and Salamanca Rehab & Nursing Center:

These facilities were acquired on January 1, 2023 by individuals with whom Lisa Kaplewicz is affiliated. Lisa covered as the Regional Nurse in the region where these facilities are for an extended period of time while the designated Regional Nurse was on a leave of absence.

Dunkirk's annual recertification survey was completed in December 2023, during the time Lisa Kaplewicz was covering for the Regional Nurse; the survey resulted in two (2) low-level scope/severity deficiencies (D Level). The Health Inspection domain continues to reflect deficiencies identified during the 2021 and 2022 annual inspection surveys, prior to acquisition by individuals with whom Lisa Kaplewicz is affiliated. The current Health Inspection rating reflects these deficiencies which are heavily weighted due to their scope and severity, despite improved survey outcomes under Lisa Kaplewicz's direct guidance. As described above, the Health Inspection rating significantly impacts the Overall star rating for the facility.

Salamanca's annual recertification survey was completed in September 2023 and resulted in five (5) low-level scope/severity deficiencies, two (2) of which were not related to Lisa Kaplewicz's involvement. One (1) deficiency was related to paper compliance and there were two (2) isolated clinical deficiencies that

resulted in no negative impact on the resident involved. The current Health Inspection rating of two (2) stars continues to reflect the health inspection surveys under the previous ownership. A full-time Nurse Practitioner was recently hired to collaborate with the clinical team and ensure the highest standards of care.

Delhi Rehab & Nursing Center:

This facility was acquired in January 2018 by individuals with whom Lisa Kaplewicz is affiliated. The facility is currently pending a health inspection survey; the last survey was on February 2, 2022. During Lisa Kaplewicz's period of involvement at Delhi, the facility recently hired a new Administrator with an excellent reputation who lives local to the facility. The new leadership is expected to significantly aid in the recruitment and retention of staff, addressing the challenges associated with being a very rural facility, and a favorable health inspection is anticipated.

Ghent Rehab & Nursing Center:

This facility was acquired in January 2020 by individuals with whom Lisa Kaplewicz is affiliated. The annual recertification survey was completed in September 2023 and resulted in low-level scope/severity deficiencies; three (3) of six (6) deficiencies were not related to clinical administration. Lisa Kaplewicz has helped to hire and train a new Regional Nurse to guide the facility and provide on-site quality assurance, risk assessment, and support to the Director of Nursing/clinical team. The Health Inspection rating has been significantly impacted by annual and complaint health inspection surveys that occurred during the tenure of leadership that are no longer present. In addition to the Regional Nurse, a new Administrator, Director of Nursing, Regional Nurse, Medical Director, and Nurse Practitioner have been hired.

Alpine Rehabilitation & Nursing Center:

This facility was acquired in July 2009 by individuals with whom Lisa Kaplewicz is affiliated. The facility recently hired a new Administrator who, in collaboration with the Director of Nursing and Regional Nurse, is utilizing standards and initiatives, similar to those implemented in Tarrytown, to improve the star ratings. The facility maintains favorable Health Inspection and Quality Measure ratings of three (3) stars. The new Administrator is focused on the recruitment and retention of staff, which is expected to result in a more favorable Staffing rating.

Auburn Rehab & Nursing Center:

This facility was acquired in February 2016 by individuals with whom Lisa Kaplewicz is affiliated. The facility's most recent survey was completed in February 2023 and resulted in six (6) low-level, isolated deficiencies that had no negative impact on residents. A new Director of Nursing with an excellent reputation was recently hired. With Lisa Kaplewicz's guidance, the Regional Nurse is working closely with the Director of Nursing to ensure the highest quality of care and services. The facility has implemented different strategies to mitigate healthcare personnel staffing shortages. The facility is predicted to increase its Quality Measures rating to two (2) by the end of the quarter. Lisa Kaplewicz continues to work with the Regional Nurse to address all Quality Measures categories in an effort to maintain the upward trend.

Gowanda Rehab & Nursing Center:

This facility was acquired in June 2018 by individuals with whom Lisa Kaplewicz is affiliated. The facility had a survey in July 2023 that resulted in a deficiency with IJ level scope and severity deficiencies. Since the IJ deficiency, there were two (2) complaint surveys that resulted in the complaints being unsubstantiated. The IJ deficiency continues to have significant implications on the current Health Inspection star rating and will continue to impact the facility despite improved outcomes. A new Director of Nursing was hired following the IJ in July 2023. The Regional Nurse is working closely with the Director of Nursing to address the issues that led to the IJ and to ensure the highest quality of care and services. Lisa Kaplewicz continues to work with the Regional Nurse to address all Quality Measures categories as well as healthcare personnel staffing shortages.

Highland Rehab & Nursing Center:

This facility was acquired in February 2013 by individuals with whom Lisa Kaplewicz is affiliated. The facility's most recent survey was completed in August 2023 and resulted in 10 low-level deficiencies that had no negative impact on residents. Five (5) of the deficiencies were paper compliance, two (2) were related to environment, two (2) were related to dietary services and one (1) was an isolated concern

related to one resident's treatment order. A new Administrator, Medical Director, and full-time Nurse Practitioner have been hired to collaborate with the clinical team and to ensure the highest standards and quality of care.

Massena Rehab & Nursing Center:

This facility was acquired in April 2019 by individuals with whom Lisa Kaplewicz is affiliated. The facility had a survey in June 2023 that resulted in two (2) deficiencies with G level scope and severity deficiencies. This was an isolated concern that continues to greatly impact the Health Inspections rating and Overall rating. Another survey was done in December 2023 and resulted in low-level deficiencies, with only one (1) of the deficiencies related to clinical administration. Massena is a rural facility, which presents inherent challenges in recruiting staff due to its location. To address these challenges, the facility has implemented aggressive measures, including partnering with a vendor to secure international nurses. Despite these efforts, the recruitment process remains difficult due to the limited local talent pool and the remote nature of the area.

Plattsburgh Rehab & Nursing Center:

This facility was acquired in January 2016 by individuals with whom Lisa Kaplewicz is affiliated. The facility is currently pending a survey; its most recent survey was completed in September 2021, which resulted in four low-level scope and severity deficiencies with no actual harm. A new position of Nurse Practitioner was recently established and filled and a new Medical Director was hired. These new hires are actively addressing quality measures with the clinical team. It is anticipated that these efforts will result in better survey outcomes.

Sodus Rehab & Nursing Center:

This facility was acquired in February 2016 by individuals with whom Lisa Kaplewicz is affiliated. The facility is currently pending a health inspection survey; the last annual recertification survey health inspection was on November 2, 2022. The facility had a survey on October 3, 2022 that resulted in a deficiency with IJ level scope and severity deficiencies. This was an isolated concern that continues to greatly impact the Health Inspection rating. A new Administrator, Director of Nursing, Medical Director, Nurse Practitioner, and Regional Nurse were hired subsequent to the last survey to work in collaboration with the clinical team to address issues in the facility that led to the IJ deficiency. It is anticipated that improvements made by these new hires will be reflected in the outcome of the pending survey.

Utica Rehabilitation & Nursing Center:

This facility was acquired in February 2015 by individuals with whom Lisa Kaplewicz is affiliated. The facility's most recent health inspection survey was in March 2023 and resulted in deficiencies with low-level scope and severity with no harm or negative impact on residents. Two (2) deficiencies were related to paper compliance, one (1) deficiency was related to the pest control program, three (3) deficiencies were related to the dietary department, and one (1) deficiency was related to the storage/labeling of medication for one (1) resident. A new Medical Director and attending physician have been hired to collaborate with the clinical team and to ensure the highest standards and quality of care. The facility maintains a favorable Quality Measure domain rating of three (3) stars.

Massachusetts. The proposed owners have experience with three facilities in Massachusetts. One facility has a CMS overall quality rating of average or higher. Two facilities have a CMS overall quality rating of below average or much below average.

Medford Rehabilitation & Nursing Center:

This facility was acquired in January 2012 by individuals with whom Lisa Kaplewicz is affiliated. Lisa Kaplewicz is working with the Regional Nurse and the Director of Nursing and will allocate time as needed for an on-site auditing/mock survey to prepare for future health inspection surveys, and to ensure continued improvements to maintain or increase the Quality Measures rating, currently at four (4) stars.

The Rehabilitation & Nursing Center at Everett:

This facility was acquired in January 2013 by individuals with whom Lisa Kaplewicz is affiliated. Lisa Kaplewicz is working with the Regional Nurse and is planning to allocate time for an on-site auditing/mock survey and to work on a plan to ensure the highest standards and quality of care; favorable outcomes are anticipated.

Facility	Corporate Director of Clinical Services/Controller Since*	Overall	Health Inspection	Quality Measure	Staffing
New York					
Clinton County Nursing Home	Subject Facility	**	**	**	****
Alpine Rehabilitation and Nursing Center	Current	**	**	***	***
	07/2012 (PHC acquired 07/2009)	***	***	*	****
Norwich Rehabilitation & Nursing Center	Current	***	****	***	*
	07/2012	**	**	****	***
Tarrytown Rehabilitation and Nursing Center	Current	***	***	****	***
	07/2012	****	****	****	**
Highland Rehabilitation and Nursing Center	Current	*	**	***	*
	02/2013	*	**	***	*
Plattsburgh Rehabilitation and Nursing Center	Current	*	**	***	*†
	01/2016	*	**	*	***
Utica Rehabilitation & Nursing Center	Current	*	*	****	**
	02/2015	**	*	**	****
Auburn Rehabilitation & Nursing Center	Current	*	*	**	**
	03/2016	**	*	***	****
Sodus Rehabilitation & Nursing Center	Current	*	*	*	***
	02/2016	***	***	****	***
Delhi Rehabilitation and Nursing Center	Current	*	*	**	**
	01/2018*	*	*	*	*
Yorktown Rehabilitation & Nursing Center	Current	***	***	****	***
	04/2018	*****	*****	*****	**
Gowanda Rehabilitation and Nursing Center	Current	*	*	****	***
	06/2018	*	**	****	*
Orchard Rehabilitation & Nursing Center	Current	****	***	*****	**
	06/2018	*	*	****	*
Massena Rehabilitation & Nursing Center	Current	*	*	**	*
	04/2019	*	*	*	****

Facility	Corporate Director of Clinical Services/Controller Since*	Overall	Health Inspection	Quality Measure	Staffing
Ghent Rehabilitation & Nursing Center	Current	*	*	***	***
	01/2020	*	*	****	***
Dunkirk Rehabilitation & Nursing Center	Current	**	*	*****	*****
	01/2023	**	*	*****	*
Eden Rehabilitation & Nursing Center	Current	*****	*****	**	****
	01/2023	****	****	***	**
Houghton Rehabilitation & Nursing Center	Current	**	**	**	***
	01/2023	**	***	***	*
Salamanca Rehabilitation & Nursing Center	Current	**	**	****	***
	01/2023	*	*	**	*
Massachusetts					
Cambridge Rehabilitation & Nursing Center	Current	****	****	***	***
	07/2012	**	**	**	***
Medford Rehabilitation and Nursing Center	Current	*	*	**	****
	07/2012	*	*	****	***
The Rehabilitation & Nursing Center at Everett	Current	**	**	***	****
	01/2013	**	*	****	****

Data Date: 01/2025

*Please Note: Lisa Kaplewicz and Israel Ostrovitsky serve as the Corporate Director of Clinical Services and Controller, respectively, not the operator, of these facilities and are not subject to star portfolio assessment under 10 NYCRR §600.2(b)(5)(iv).

*Newly built facility; data available starting 04/2019.

†This facility reported a high number of days without a registered nurse on site.

End-Dated Facilities					
Facility	Regional Nurse/Director of Nursing Services*	Overall	Health Inspection	Quality Measure	Staffing
New York					
End-Dated as Regional Nurse					
Tarrytown Hall Care Center	09/2017	****	****	****	***
	12/2011	***	***	****	***
Norwich Rehabilitation & Nursing Center	09/2017	**	**	**	***
	12/2011	****	***	*****	**

End-Dated Facilities					
Facility	Regional Nurse/Director of Nursing Services*	Overall	Health Inspection	Quality Measure	Staffing
Alpine Rehabilitation and Nursing Center	09/2017	**	**	**	***
	12/2011	**	**	**	**
End-Dated as Director of Nursing Services					
Tarrytown Hall Care Center	12/2011	***	***	****	***
	04/2006 (CMS ratings started 01/2009)	**	***	****	*

**Please Note: Lisa Kaplewicz served as the Regional Nurse/Director of Nursing Services, not the operator, of these End-Dated Facilities.*

Enforcement History

New York

A review of the operations of Tarrytown Hall Care Center for the time period indicated above, while Lisa Kaplewicz was the Regional Nurse/Director of Nursing Services reveals the following:

- The facility was assessed a federal CMP on 03/19/2007 under F309 (Quality of Care) at a G level.

A review of the operations of Tarrytown Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Alpine Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Regional Nurse/Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$650 on 07/19/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-22-034 for surveillance findings on 05/29/2020. Deficiencies were found under 10 NYCRR §415.4(b)(2) – Staff Treatment of Residents and §415.12(h)(1) and (2) – Quality of Care, Accident-Free Environment. The facility failed to ensure that alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the Department of Health in accordance with §2803-d of the Public Health Law. In addition, the facility failed to ensure the resident environment remained as free of accident hazards as possible, and that each resident received adequate supervision to prevent accidents. The facility was also assessed a federal CMP of \$7,433 on 05/29/2020 under F689 at a G level.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-16-036 for surveillance findings on 03/06/2014. Deficiencies were found under 10 NYCRR §415.26 – Administration.

A review of the operations of Norwich Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Regional Nurse/Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 for surveillance findings on 12/03/2024. Deficiencies were found under 10 NYCRR 400.21(c) – Advance Directives. The facility failed to ensure compliance with the requirements of the law governing advance directives. The facility was also assessed a federal CMP of \$15,590.25 under F578 at a J level.
- The facility was assessed federal CMPs of \$4,938 on 02/20/2024, \$4,938 on 02/12/2024, \$4,938 on 01/08/2024, and \$4,587 on 01/02/2024, \$3,645 on 04/18/2022, \$3,314 on 02/14/2022, \$2,982 on 01/31/2022, \$2,620 on 12/20/2021 (offset to FL), \$2,293 on 08/30/2021 (offset to FI), \$1,965

on 08/09/2021, \$1,625 on 07/05/2021, \$1,300 on 05/17/2021, \$975 on 03/01/2021 and \$655 on 06/08/2020 under F884 at a F level for failure to report COVID data.

- The facility was assessed federal CMPs of \$14,813 (offset to FL) on 02/06/2024, 01/30/2024, and 01/22/2024 as well as \$13,410 on 12/26/2023, 12/18/2023, and 12/11/2023 under F884 at a F level for failure to report COVID data.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-159 for surveillance findings on 07/09/2021. Deficiencies were found under 10 NYCRR §400.2 – Other laws, codes, rules, and regulations and 415.19(a)(1) and (2) – Infection Control. The facility failed to maintain an infection control program by failing to implement and practice required hand hygiene upon interaction with residents (5 violations at \$2,000). The facility was also assessed a federal CMP of \$5,060 on 07/09/2021 under F880 at a D level.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-142 for surveillance findings on 12/21/2020. Deficiencies were found under 10 NYCRR §400.2 – Other laws, codes, rules, and regulations and 415.19(a)(1-2) – Infection Control and Governor's Executive Order 202.11.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-055 for surveillance findings on 09/12/2017. Deficiencies were found under 10 NYCRR §415.12 – Quality of Care. The facility was also assessed a federal CMP of \$7,023 on 09/12/2017 under F309 at a G level.

A review of the operations of Highland Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$658 on 01/17/2022 under F884 at an F level for failure to report COVID data.

A review of the operations of Plattsburgh Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$650 on 11/15/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-014 for surveillance findings on 02/29/2016. Deficiencies were found under 10 NYCRR §415.12 – Quality of Care Highest Practicable Potential.

A review of the operations of Utica Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-23-072 for surveillance findings on 03/08/2023. Deficiencies were found under 10 NYCRR §415.19(b)(4) – Infection Control - Handwashing. The facility failed to establish and maintain an infection prevention and control program with regard to a resident's alleged treatment.
- The facility was assessed federal CMPs of \$1,300 on 07/05/2021, \$983 on 06/28/2021, and \$655 on 06/21/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-232 for surveillance findings on 09/23/2021. Deficiencies were found under 10 NYCRR §415.19(a) – Infection Control. Specifically, a CNA reported feeling ill when self-screened at the beginning of their shift and was permitted to remain at the facility and provide care to residents. This CNA was observed on COVID-19 exposed, COVID-19 positive, and on COVID-19 negative units. This CNA tested positive for COVID-19 after an antigen test (point of care, rapid test) was completed four hours after beginning work.
- The facility was fined \$4,700 pursuant to Stipulation and Order NH-23-030 for surveillance findings for the period 12/10/2020 to 04/20/2021. Deficiencies were found under 10 NYCRR §415.19(f) – Infection Control. The facility failed to possess and maintain a 60-day supply of all necessary items of personal protective equipment (PPE) on ninety-four days during the period December 10, 2020 to April 20, 2021.

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-021 for surveillance findings on 12/21/2018. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) – Resident behavior and facility practices (staff treatment of residents). The facility was also assessed a federal CMP of \$115,388 on 12/21/2018 under F600 at a G level for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-010 for surveillance findings on 09/18/2018. Deficiencies were found under 10 NYCRR §415.12(c)(2) – Quality of Care – Pressure Sores with Admission. The facility was also assessed a federal CMP of \$41,340 on 09/18/2018 under F686 at a G level for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-040 for surveillance findings on 07/18/2018. Deficiencies were found under 10 NYCRR §415.12(h)(2) – Quality of Care – Accident-Free Environment. The facility was also assessed a federal CMP of \$13,150 on 07/18/2018 under F689 at a G level.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-18-001 for surveillance findings on 06/30/2017, 12/21/2016, and 03/25/2016. Deficiencies were found under 10 NYCRR §415.4(b)(3) – Resident behavior and facility practices (staff treatment of residents/investigate violations). The facility was also assessed a federal CMP of \$11,732 on 06/30/2017 under F490 at a K level for failure to make sure that the facility is administered in an acceptable way that maintains the well-being of each resident as well as under F323 at a K level for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents.
- The facility was assessed a federal CMP on 03/25/2016 under F314 at a G level for failure to give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores.

A review of the operations of Auburn Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$17,000 pursuant to Stipulation and Order NH-22-107 for surveillance findings on 04/28/2022. Deficiencies were found under 10 NYCRR §2.61 – Prevention of COVID-19 transmission by covered entities and 415.19 – Infection Control. Specifically, the facility permitted CNA #16, who is not fully vaccinated against COVID-19, to work sixteen days. TNA #17, likewise not fully vaccinated, was observed working at the facility and in proximity to residents on 04/28/2022.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-081 for surveillance findings on 06/05/2019. Deficiencies were found under 10 NYCRR §415.12(k)(6) – Quality of Care, Special Needs (Respiratory Care). The facility was also assessed a federal CMP of \$7,036 on 06/05/2019 under F695 at a G level.

A review of the operations of Sodus Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-23-027 for surveillance findings on 10/03/2022. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) – Resident behavior and facility practices (staff treatment of residents). Specifically, the facility failed to protect each resident from physical abuse in that it failed to appropriately and timely: investigate and report a report of abuse; and remove abusive staff from assignments. The facility was also assessed a federal CMP of \$76,128 on 10/03/2022 under F600 at a K level for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.
- The facility was assessed a federal CMP of \$650 on 06/21/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-21-099 for surveillance findings on 06/17/2020. Deficiencies were found under Executive Order 202.18. Specifically, the facility failed to notify family members or next of kin within 24 hours when staff were diagnosed with COVID-19.

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-20-073 for surveillance findings on 09/23/2020. Deficiencies were found under 10 NYCRR §415.19(a)(3) Infection Control.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-036 for surveillance findings on 03/14/2019. Deficiencies were found under 10 NYCRR §415.12(c)(1) Quality of Care – Pressure Sores – Prevention. The facility was also assessed a federal CMP on 03/14/2019 (in conjunction with the 02/15/2019 CMP) under F686 at a G level for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-041 for surveillance findings on 02/15/2019. Deficiencies were found under 10 NYCRR §415.12 Quality of Care. The facility was also assessed a federal CMP of \$57,885 on 02/15/2019 under F684 at a G level for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals.

A review of the operations of Delhi Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$9,750 on 01/07/2022 for multiple deficiencies including failure to provide and implement an infection prevention and control program under F880 at a D level.
- The facility was fined \$16,000 pursuant to Stipulation and Order NH-21-156 for surveillance findings on 12/12/2021 and 12/11/2020. Deficiencies were found under 10 NYCRR §415.19(a)(1) and (2) Infection Control. The facility failed to maintain an infection control program by failing to enforce PPE and hand hygiene requirements for entering and exiting "droplet precaution" areas of the facility and by failing to enforce required PPE use (N95 Mask) while performing staff testing.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-20-015 for surveillance findings on 09/18/2019. Deficiencies were found under 10 NYCRR §415.12 Quality of Care – Highest Practicable Potential. The facility was also assessed a federal CMP of \$47,554 on 09/18/2019 under F684 at a G level.

A review of the operations of Yorktown Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Gowanda Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-24-025 for surveillance findings on 07/25/2023. Deficiencies were found under 10 NYCRR §415.12(h)(2) – Quality of Care. The facility failed to provide adequate supervision to prevent accidents. Specifically, the facility failed to properly supervise a resident with a history of unsafe wandering. As a result, the resident had eight (8) documented falls from 03/04/2023 to 07/21/2023. Changes to the plan have been ineffective. The facility was also assessed a federal CMP of \$61,162 on 07/25/2023 under F689 at a J level.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 for surveillance findings on 12/04/2020. Deficiencies were found under 10 NYCRR §415.19(a)(1) – Infection Control and 10 NYCRR 400.2 – Other Laws, Codes, Rules and Regulations. The facility failed to obtain COVID-19 specimen results within 48 hours for three staff members and failed to document facility efforts to obtain the delayed COVID-19 specimen results (3 citations at \$2,000/each).
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-044 for surveillance findings on 06/26/2019. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) – Abuse. The facility failed to prevent verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion of residents. The facility was also assessed a federal CMP of \$7,036 on 06/26/2019 under F600 at a G level.

A review of the operations of Orchard Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH-21-089 for surveillance findings on 02/02/2021. Deficiencies were found under 10 NYCRR §415.19(a)(1) and (2) Infection Control. The facility failed to maintain an infection control program by allowing employees to work shifts at the facility in excess of 12 hours who were not screened for COVID-19 and the facility also failed to observe transmission-based precautions by failing to change PPE following interactions with COVID positive residents.

A review of the operations of Massena Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed federal CMPs of \$14,813 (Offset to FL) on 02/12/2024, 02/06/2024 and 01/30/2024, \$13,636 on 01/02/2024, 12/26/2023 and 12/18/2023 as well as \$5,292 (Offset to FI) on 05/15/2023, 05/08/2023 and 05/02/2023 under F884 at a F level for failure to report COVID data.
- The facility was assessed federal CMPs of \$4,938 on 01/08/2024, \$4,235 on 06/26/2023, \$3,882 (Offset to FL) on 06/20/2023, \$3,529 on 06/12/2023, \$3,176 on 06/05/2023, \$2,823 on 05/30/2023, \$2,470 on 05/23/2023, \$987 on 03/28/2022 and \$650 on 07/13/2020 under F884 at a F level for failure to report COVID data.
- The facility was fined \$20,000 pursuant to Stipulation and Order NH-23-098 for surveillance findings on 06/28/2023. Deficiencies were found under 10 NYCRR §415.12 Quality of Care and 10 NYCRR §415.12(c)(2) Quality of Care – Pressure Sores. Specifically, the facility failed to ensure a resident with a diabetic ulcer wound received treatment and care in accordance with professional standards of practice. The resident developed an osteomyelitis infection in the foot bone that worsened requiring hospitalization and was considered for possible amputation of the foot. In addition, the facility failed to ensure two residents with pressure ulcers on the feet received treatment and care in accordance with professional standards of practice. One resident's injuries worsened requiring hospitalization for osteomyelitis infection in the bone on both feet. Another resident's injuries worsened to coccyx pressure ulcers and deep tissue injuries. The facility was also assessed a federal CMP of \$46,742 on 06/28/2023 under F684 at a G level and F686 at a G level.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-21-102 for surveillance findings on 01/21/2021. Deficiencies were found under 10 NYCRR §415.19(b)(4) Infection Control – Hand Hygiene. The facility failed to ensure staff members performed hand hygiene before and after all resident contact, and before putting on and after removing PPE.

A review of the operations of Ghent Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-24-055 for surveillance findings on 10/27/2022. Deficiencies were found under 10 NYCRR §415.12(c)(1) Quality of Care – Pressure Ulcers and §415.12(m)(2) Quality of Care – No Significant Medication Errors. For §415.12(c)(1), the facility failed to ensure that a resident who was admitted with an open wound was not properly monitored or treated. Shortly after admission, the resident developed a new wound that was likewise not monitored or treated. These failures resulted in the resident expiring from septic shock. For §415.12(m)(2), the facility failed to ensure that a resident received prescribed medication to prevent blood clots. This failure resulted in the resident suffering a stroke, which resulted in actual harm to the resident. The facility was also assessed a federal CMP of \$67,746 on 10/27/2022 under F686 at a G level and F760 at a G level. The facility failed to provide appropriate pressure ulcer care and prevent new ulcers from developing and failed to ensure that residents are free from significant medication errors.
- The facility was assessed federal CMPs of \$3,289 on 02/28/2022, \$2,960 on 01/24/2022, \$2,621 on 08/30/2021, \$2,293 on 08/23/2021, \$1,950 on 08/16/2021, \$1,625 on 06/21/2021, \$1,300 on 03/01/2021, \$983 on 02/22/2021 and \$655 on 01/25/2021 for failure to report COVID data under F884 at a F level.

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-131 for surveillance findings on 02/16/2021. Deficiencies were found under 10 NYCRR §415.12(h)(1) & (2) Quality of Care – Accident-Free Environment. The facility failed to ensure the resident environment remains as free of accident hazards as possible and that each resident receives adequate supervision and assistive devices to prevent accidents. Specifically, the facility failed to protect a resident from serious injury when it failed to properly assess the resident's risk of elopement, and, when it failed to ensure that door alarms, which could have alerted staff when opened, were on and working properly. As a result, the resident was able to exit the facility undetected and was later found with hypothermia from the prolonged exposure to freezing temperatures. The facility was also assessed a federal CMP of \$7,345 on 02/16/2021 under F689 at a G level.

A review of the operations of Dunkirk Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Eden Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Houghton Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$111,200 on 10/27/2024 under F600 at a G level for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.

A review of the operations of Salamanca Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

Massachusetts

A review of the operations of Cambridge Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$3,250 on 04/07/2022. The facility failed to provide and implement an infection prevention and control program under F880 at a D level.
- The facility was assessed federal CMPs of \$3,645 on 01/24/2022, \$3,276 on 09/20/2021, \$2,948 on 08/30/2021, \$2,621 on 08/23/2021, \$2,293 on 08/16/2021, \$1,965 on 08/09/2021, \$1,625 on 08/02/2021, \$1,310 on 07/26/2021, \$975 on 07/19/2021 and \$655 on 04/19/2021 for failure to report COVID data under F884 at a F level.

A review of the operations of Medford Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$15,593 on 05/25/2023 for multiple deficiencies including the following: The facility failed to create and put into place a plan for meeting the resident's most immediate needs within 48 hours of being admitted under F655 at a G level; provide appropriate treatment and care according to orders, resident preferences and goals under F684 at a G level; ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a G level.
- The facility received a federal citation on 11/16/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a G level.
- The facility was assessed a federal CMP of \$9,770 on 10/12/2022 for multiple deficiencies including the facility's failure to provide appropriate treatment and care according to orders, resident's preferences, and goals under F684 at a D level.

- The facility was assessed a federal CMP of \$79,248 on 07/05/2022 for multiple deficiencies. The facility failed to ensure services provided by the nursing facility meet professional standards of quality under F658 at a J level; provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and resident's advance directives under F678 at a J level; provide safe, appropriate pain management for a resident who requires such services under F697 at a G level.
- The facility was assessed a federal CMP of \$9,750 on 02/03/2022. The facility failed to provide and implement an infection prevention and control program under F880 at an E level.
- The facility was assessed a federal CMP of \$95,498 and \$15,343 on 04/27/2021 for multiple deficiencies including the facility's failure to provide appropriate treatment and care according to orders, resident's preferences, and goals under F684 at a G level.

A review of the operations of The Rehabilitation & Nursing Center at Everett for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$34,886 and a payment denial on 08/11/2022. The facility failed to honor the resident's right to a safe, clean, comfortable, and homelike environment, including but not limited to receiving treatment and support for daily living safely under F584 at an F level.

Additional Information

Staffing and Occupancy

The applicants were asked to explain how they plan to retain current county nursing home staff members, as well as, recruit new nursing home staff members after the transaction closes. In addition, the applicants were asked to explain how they plan to increase occupancy since it is currently operating at approximately 50% capacity.

Retaining current county nursing home staff members. Using their experience in other facilities that have been successful in retaining and hiring staff, the members of the applicant plan to establish a good rapport with staff, embracing staff as part of the team and offering ongoing educational opportunities, as well as providing competitive payment packages.

Recruiting new nursing home staff members. The applicants will access employee referral programs and will utilize social media advertisements and online job placement sites. By offering hiring bonus incentives, ongoing educational opportunities, and a competitive benefits package, the members will use their experience in other facilities that have been successful in hiring and retaining staff. Clinton County Nursing Home is located in Plattsburgh, about 30 minutes south of the Canadian border. In the urban setting of Plattsburgh, there are opportunities for direct care worker training, including a Certified Nurse Aide (CNA) training program provided by the County, as well as CNA training provided by Plattsburgh Rehabilitation & Nursing Center, a facility that is in close proximity to Clinton County Nursing Home. Plattsburgh Rehabilitation & Nursing Center became part of the Personal Healthcare (PHC) network of facilities in 2016, a network that the members of the applicant are affiliated with. Being part of the same network will facilitate coordination between the two facilities for staffing and other operational efficiencies. In addition, the applicants are familiar with the community and are known in the community. The applicants plan to utilize existing hospital relationships and will hire marketing personnel to establish new hospital relationships and conduct community outreach, targeting CNA training programs to encourage entry-level candidates to complement existing, experienced staff.

Increase nursing home occupancy. The applicants state the County put a hold on all new admissions due in part to the facility's staffing levels. The applicants plan to immediately increase staffing and open the facility for new admissions. In addition, the applicants will utilize existing hospital relationships and will hire marketing personnel to establish new hospital relationships and conduct community outreach.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2023) results and the first- and third-year operating budgets after the change in ownership, in 2025 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
<u>Revenues</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid-FFS	\$199.63	\$2,569,599	\$174.43	\$3,180,204	\$174.43	\$3,356,877
Medicaid-MC	\$185.71	6,500	\$174.46	257,853	\$174.47	272,177
Medicare-FFS	\$706.10	14,122	\$625.02	1,945,069	\$625.00	2,053,125
Commercial-FFS		0	\$350.13	363,080	\$350.00	383,250
Private	\$355.87	185,766	\$379.93	919,802	\$380.00	970,900
Other*		285,394		150,000		150,000
Assessment		0		273,109		288,283
Total Revenues		\$3,061,381		\$7,089,117		\$7,474,612
<u>Expenses</u>						
Operating	\$546.98	\$7,356,365	\$241.71	\$6,352,132	\$228.99	\$6,352,132
Capital	\$10.60	142,561	\$28.55	750,192	\$27.04	750,192
Total Expenses	\$557.58	\$7,498,926	\$270.26	\$7,102,324	\$256.03	\$7,102,324
Net Income (Loss)		<u>(\$4,437,545)</u>		<u>(\$13,207)</u>		<u>\$372,288</u>
RHCF Patient Day		13,449		26,280		27,740
RHCF Utilization %		46.06%		90%		95%

*Other revenue \$150,000: Medicare revenue for therapy services that is not included in the Medicare rate.

The following is noted concerning the submitted RHCF operating budget:

- The current year reflects the facility's 2023 revenues and expenses.
- Medicaid revenue is based on the Department of Health's 2023 Regional Pricing Rate Sheets. Medicaid Managed Care rates are the same as the Fee-For-Service since they have not been negotiated yet.
- Clinton County Nursing Home typically receives Medicare revenue based on Medicare-eligible days resulting from residents' return from an acute hospital stay. The new operator plans to provide additional subacute services, resulting in more high-acuity, short-term residents.
- The new operator plans to accept Commercial Insurance and its projections are based on experience in other facilities.
- Current Year staffing is based on 2023 staffing levels. Years One and Three staffing is based on the anticipated increase in utilization and services. The applicant members have increased census at their other facilities post-acquisition.
- Expenses are based on 2023 operating expenses, adjusted for inflation, utilization, staffing, wages, operational efficiencies, and rent.
- The projected percentage of direct care staffing costs to projected facility revenues is 51.07% in Year One and 48.44% in Year Three, exceeding the 40% requirement in Public Health Law §2808.
- The percentage of direct resident care costs to projected facility revenue is 74.93% in Year One and 71.06% in Year Three, exceeding the 70% requirement in Public Health Law §2808.
- The facility's projected profit percentage is forecasted to be a loss of 0.19% in Year One and 4.98% profit in Year Three, less than the 5% maximum outlined in Public Health Law §2808.
- According to the applicant, the decrease in occupancy is due to the facility putting a hold on new admissions related to staffing issues and focusing on selling the facility. The applicant plans to hire staff and begin taking new admissions soon.
- The increase in Medicare days is based on the proposed new operator's plan to provide additional subacute services to the community, resulting in more high-acuity, short-term residents. They also plan on accepting Commercial Insurance.

- The applicant members have increased census at their other facilities post-acquisition.

Utilization by the payor for the first and third years after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Medicaid FFS	12,872	95.71%	18,232	69.38%	19,245	69.38%
Medicaid MC	35	0.26%	1,478	5.62%	1,560	5.62%
Medicare FFS	20	0.15%	3,112	11.84%	3,285	11.84%
Commercial FFS	0	0%	1,037	3.95%	1,095	3.95%
Private Pay	<u>522</u>	<u>3.88%</u>	<u>2,421</u>	<u>9.21%</u>	<u>2,555</u>	<u>9.21%</u>
Total	13,449	100%	26,280	100%	27,740	100%

- The facility's Medicaid admissions of 37.5% in 2021, 70.8% in 2022, and 87.5% in 2023 were above Clinton County's 75% threshold rate of 14.8% in 2021, 17.2% in 2022, and 25% in 2023.
- The breakeven utilization is projected at 95% in Year Three.

Operations Transfer and Surrender Agreement (OTA)

The applicant submitted an executed OTA to assume the operations associated with the RHCF, which will become effective upon PHHPC approval. The OTA was amended to eliminate the "Stay Bonus" that would have paid the transferor \$275,000 or \$200,000 if 70% or 60%, respectively, of the staff equivalent remained employed at closing. The final terms are summarized below:

Date:	February 7, 2023. Amended September 11, 2024
Transferor:	County of Clinton
Transferee:	CLRNC Operating, LLC
Asset Transferred:	Rights, title, and interest in the assets used in the operations. Includes furniture and equipment, computers, vehicles, parts, inventory, assumed contracts, manuals, owned software, telephone and facsimile numbers, books, records, permits, trust property, Goodwill, Medicare and Medicaid provider agreements, and third-party payor programs.
Excluded Assets:	Cash, marketable securities, grant awards, rate adjustments, accounts receivable, third-party payments, and intergovernmental transfer payments.
Assumption of Liabilities:	It is related to the period after closing.
Excluded Liabilities:	Any liability before the closing date
Purchase Price	None

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of November 27, 2024, the facility had no outstanding Medicaid liabilities.

Amendment to Contract of Sale

The applicant has submitted an executed amendment contract of sale for the RHCF's realty. The terms are summarized below: The Amendment reduced the purchase price from \$5,500,000 to \$2,000,000.

Date:	September 19, 2024.
Seller:	County of Clinton
Purchaser:	CLRNC Realty, LLC.
Asset Transferred:	Real Property and Other Property (fixtures and improvements) located at 16 Flynn Avenue, Plattsburgh, New York 12901
Excluded Assets	All assets transferred via OTA, 2019 Ford Super Duty F350, and 2007 John Deere 1128DE.
Purchase Price:	\$2,000,000
Payment of Purchase Price:	\$ 550,000 deposit at signing \$ 1,450,000 Balance due at Closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity – CLRNC Realty, LLC	\$ 500,000
Loan – (5) five-year fixed rate with a 5-year option, 8%, 25-year amortization	<u>1,500,000</u>
Total	<u>\$2,000,000</u>

CIBC Bank USA has provided a letter of interest.

BFA Attachment A-2 shows CLRNC Realty, LLC members' net worth, which reveals sufficient resources to meet the equity requirement. There are adequate liquid resources to fund a balloon payment should acceptable financing not be available during refinancing. Ephraim Zagelbaum has provided an affidavit stating, the willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall.

Lease Agreement

The applicant submitted a draft lease agreement; the terms are summarized below:

Premises:	An 80-bed RHCF located at 16 Flynn Avenue, Plattsburg, New York, 12901.
Landlord:	CLRNC Realty, LLC
Lessee:	CLRNC Operating, LLC
Term:	Ten Years - Automatically extends for twenty (20) one (1) year renewals.
Rent:	\$610,000 annual rent
Provisions:	Triple Net

The applicant attested that the lease arrangement is a non-arms-length agreement. The applicant has submitted two letters from New York Licensed Real Estate Brokers attesting that the lease cost is at fair market value.

Capability and Feasibility

There are no project costs associated with this application and no purchase price for the operations. CLRNC Realty, LLC will purchase the real property for \$2,000,000, funded with \$500,000 in members' equity and a \$1,500,000 fixed-rate loan for 5 years with a 5-year option at 8% amortized over 25 years. CIBC Bank USA has provided a letter of interest. CLRNC Realty, LLC members' net worth reveals sufficient resources to fund a balloon payment should acceptable financing not be available during refinancing.

The working capital requirement is estimated at \$1,183,721 based on two months of first-year expenses and will be funded with ongoing operations and members' equity where required. The total equity requirements for this project (CON 231220) and Wells Nursing Home (CON 232241) is \$2,823,568. Lisa Kaplewicz and Israel Ostrovitsky will use short-liquid resources to cover the working capital on both

projects, which are estimated to be \$1,370,751 and \$1,183,721, respectively. Lisa Kaplewicz has a letter of interest from Ephraim Zigelbaum for a \$1,500,000 loan, and Israel Ostrovitsky has a letter of interest from Alex Barth for a \$1,500,000 loan. Both loans are for ten years at a 5% interest rate (no repayment during the first three years).

The budget projects a (\$13,207) net loss in Year One and a net income of \$372,288 in Year Three. Revenues in Year One are expected to increase by \$4,027,736 as projected utilization climbs from 46.06% to 90%. Overall expenses are projected to decrease by \$396,602 in Year One, primarily from a \$1,543,342 reduction in employee benefits, offset by an increase in salaries and wages of \$326,887, \$610,000 in rent expenses, and a \$209,853 other net increases. BFA Attachment B is CLRNC Operating, LLC's pro forma balance sheet, which shows the entity will start with \$1,196,928 in members' equity on the first day of operations.

BFA Attachment C is Clinton County Nursing Home's financial summary for 2020 through 2023. During this time, the RHCF had average negative net assets, and average positive working capital, and suffered an average operating loss.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A-1	Members' Net Worth of CLRNC Operating, LLC
BFA Attachment A-2	Members' Net Worth of CLRNC Realty, LLC
BFA Attachment B	Pro Forma Balance Sheet, CLRNC Operating, LLC
BFA Attachment C	Financial Summary Clinton County Nursing Home 2020-2023
BFA Attachment D	Real Property Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish CLRNC Operating LLC as the new operator of Clinton County Nursing Home, an 80-bed Residential Health Care Facility currently operated by Clinton County at 16 Flynn Avenue, Plattsburgh, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

231220 E

FACILITY/APPLICANT:

CLRNC Operating LLC d/b/a Clinton County
Nursing Home

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed building lease agreement acceptable to the Department of Health [BFA]
3. Submission of an executed real property loan commitment acceptable to the Department of Health [BFA]
4. Submission of an executed working capital loan commitment acceptable to the Department of Health [BFA]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 232241-E
WRNC Operating LLC d/b/a
Wells Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Fulton
Acknowledged: February 7, 2024

Executive Summary

Description

WRNC Operating LLC d/b/a Wells Rehabilitation and Nursing Center, a New York limited liability company, requests approval to be established as the new operator of Wells Nursing Home, a 100-bed, voluntary not-for-profit corporation, Article 28 residential health care facility (RHCF) with a 22-slot Adult Day Health Care Program (ADHCP) at 201 West Madison Avenue, Johnstown (Fulton County). Upon approval, the facility will be renamed Wells Rehabilitation and Nursing Center.

Wells Nursing Home Inc., a New York State not-for-profit corporation is the current operator of the facility and the current real property owner. On May 17, 2023, Wells Nursing Home, Inc. entered into an Operations Transfer and Privatization Agreement (OTPA) 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 17, 2023, Wells Nursing Home, Inc. and WRNC Realty, LLC entered into a Contract of Sale (COS) for the sale and acquisition of the RHCF's real estate for a purchase price of \$7,000,000. The applicant will lease the premises from WRNC Realty, LLC through a non-arms-length agreement.

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

Current Operator

Wells Nursing Home Inc.
(Not-for-Profit Corporation)

Proposed Operator

WRNC Operating LLC. d/b/a Wells Rehabilitation and Nursing Center

Members:

Israel Ostrovitsky	50.0%
Lisa Kaplewicz*	50.0%

**Managing Member of the facility.*

Concurrently under review, the applicant members are seeking approval to acquire the operating interest in Clinton County Nursing Home, an 80-bed, municipal corporation Article 28 RHCF located in Clinton County (CON 231220).

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. As of February 5, 2025, the facility reported 97.8% occupancy of staffed beds and Fulton County reported 95.4% occupancy of staffed beds.

Program Summary

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

Financial Summary

There are no project costs associated with this application and no costs associated with the acquisition of RHCF's operations. The purchase price for the real estate of \$7,000,000 will be funded with equity of \$1,750,000 from the proposed realty members and a loan of \$5,250,000 at 8.5% interest for a five-year term and a payout period of 25 years. CIBC Bank has provided a letter of interest for the respective loan at the stated terms. Ephraim Zagelbaum

submitted an affidavit indicating willingness to cover the balloon payment if re-financing is not available after the five-year term.

The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,032,629	\$10,032,629
Expenses	<u>10,005,837</u>	<u>10,005,837</u>
Net Income	\$26,792	\$26,792

Health Equity Impact Assessment.

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

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of two rent reasonable letters from New York State realtors acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

Approval conditional upon:

1. This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The proposed operator must provide notification to The Department of Health of any obligations arising from business transactions with persons acting as employees of or owners of Personal Healthcare LLC. [LTC]

Council Action Date

April 10, 2025

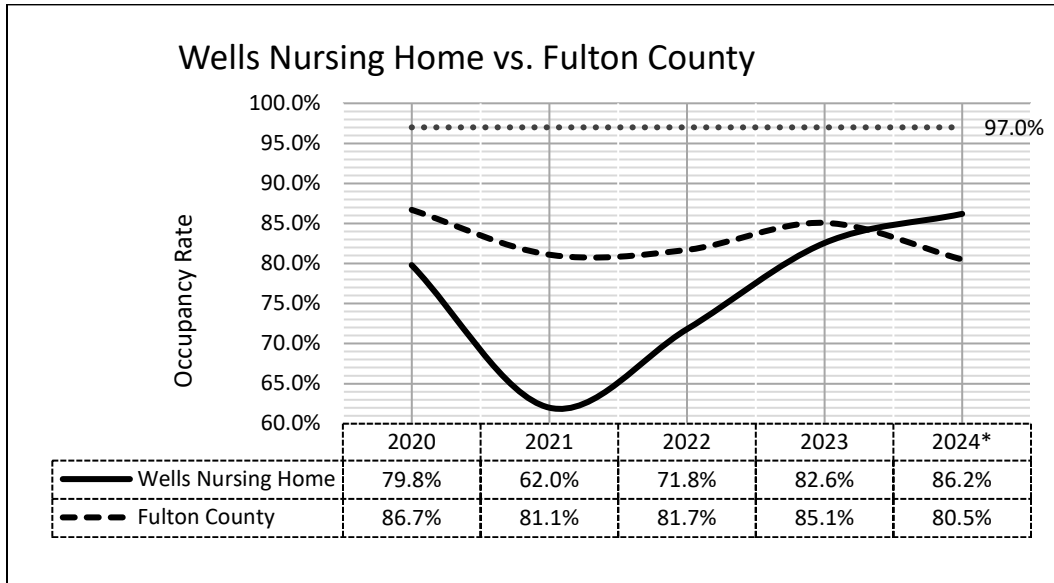
Need Analysis

Background and Analysis

The primary service area is Fulton County, which has a population projected to decrease to 51,294 by 2030 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Fulton County	New York State
Total Population (2023 Estimate)	52,787	19,872,319
Hispanic or Latino (of any race)	4.1%	19.6%
White (non-Hispanic)	88.8%	53.4%
Black or African American (non-Hispanic)	1.4%	13.6%
Asian(non-Hispanic)	0.9%	8.8%
Other (non-Hispanic)	4.8%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles)



*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHCF cost reports.

Based on weekly census data, the facility reported that 90% of their 100 licensed beds are staffed and 88% occupied as of February 5, 2025, for a 97.8% occupancy of staffed beds. Fulton County had 87.1% of the county's 360 licensed beds staffed and 83.5% occupied for a 95.4% occupancy of staffed beds.

The table below shows the CMS Rating and the utilization of the closest RHCFs to Wells Nursing Home.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCFS	Occupancy			
	As of 1/2025		Miles/Time	2021	2022	2023	2024*
Wells Nursing Home	2	100	0 miles/0 mins	62.0%	71.8%	82.6%	86.2%
Fulton Ctr for Rehab	1	176	5.7 miles/12 mins	94.8%	95.0%	95.0%	95.5%
Nathan Littauer	2	84	6.7 miles/14 mins	75.2%	65.6%	67.4%	59.8%
River Ridge Living (Montgomery)	1	120	11.9 miles/21 mins	63.2%	79.5%	87.9%	93.5%
Wilkinson RHCf (Montgomery)	3	160	11.8 miles/19 mins	77.5%	64.3%	63.8%	64.6%
Palatine Nursing (Montgomery)	1	70	14.0 miles/20 mins	83.7%	87.0%	93.4%	94.0%
Capstone Center (Montgomery)	2	120	16.3 miles/24 mins	94.5%	93.4%	94.9%	95.4%

*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHCf's cost reports.

The following table provides the Case Mix Index (CMI) for the facility and the surrounding RHCFS, which reflects the relative resources predicted to provide care to a resident. The higher the case mix index weight, the greater the resource requirements for the residents.

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor mix	Medicaid Only
Wells Nursing Home	0.9665	0.919	0.9464	0.846	0.9255	0.843
Fulton Ctr for Rehab	1.2902	1.2464	1.319	1.3052	1.3334	1.2975
Nathan Littauer	1.0804	0.8558	1.075	0.8739	1.1636	0.9541
River Ridge Living (Montgomery)	1.2483	1.2737	1.2039	1.2069	1.2569	1.3011
Wilkinson RHCf (Montgomery)	1.0696	0.9496	0.9926	0.9294	1.2653	1.1529
Palatine Nursing (Montgomery)	1.1744	0.9622	1.1118	1.0512	1.2172	1.1943
Capstone Center (Montgomery)	1.0447	0.9701	1.1045	1.0023	1.051	0.9725

Source: RHCf Cost Report

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Fulton County rate for the years 2021 through 2023.

Medicaid Access	2021	2022	2023
Fulton County Total	30.3%	31.2%	24.7%
Fulton Threshold Value	22.7%	23.4%	18.5%
Wells Nursing Home	30.4%	59.3%	50.0%

Source: RHCF Cost Report

Conclusion

There will be no changes to beds or services due to this application. As of February 5, 2025, the facility reported 97.8% occupancy of staffed beds and Fulton County reported 95.4% occupancy of staffed beds.

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	Wells Nursing Home Inc	Wells Rehabilitation and Nursing Center
Address	201 West Madison Avenue, Johnstown, New York 12095	Same
RHCF Capacity	100 beds	Same
ADHCP Capacity	22	Same
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-Profit Corporation	Proprietary
Operator	Wells Nursing Home Inc. (Not-For-Profit Corporation)	WRNC Operating LLC d/b/a Wells Rehabilitation and Nursing Center <u>Membership:</u> Lisa Kaplewicz* 50% Israel Ostrovitsky 50% <i>*Managing Member</i>

Character and Competence

Israel Ostrovitsky lists employment as Controller at Personal Healthcare (PHC), a senior care management company, in Tarrytown, NY. Israel holds a bachelor's degree in accounting from Touro College and is a New York State licensed certified public accountant. Israel Ostrovitsky discloses the following healthcare facility ownership interest:

New York Nursing Home

Clinton County Nursing Home (50%)

Pending

Lisa Kaplewicz lists employment as Corporate Director of Clinical Services at Personal Healthcare (PHC), a senior care management company, in Tarrytown, NY. In that role, Lisa also provides coverage as a Regional Nurse. Previously, Lisa was a Regional Nurse at Personal Healthcare and Director of Nursing Services at Tarrytown Hall Care Center, Tarrytown, NY. Lisa holds a master's degree in nursing from the University of Cincinnati and is a New York State licensed registered professional nurse. Lisa Kaplewicz discloses the following healthcare facility ownership interest:

New York Nursing Home

Clinton County Nursing Home (50%)

Pending

A review was conducted to ensure that the applicants had adequate relevant experience. Lisa Kaplewicz has been the Corporate Director of Clinical Services at Personal Healthcare since September 2017 and oversees 21 facilities in that role. Previously, Lisa was a Regional Nurse at Personal Healthcare from December 2011 to September 2017 and Director of Nursing Services at Tarrytown Hall Care Center from April 2006 to December 2011. Israel Ostrovitsky has been the Controller at Personal Healthcare since July 2012 and oversees 21 facilities in that role.

As per 10 NYCRR §600.2, regarding requisite experience, the applicant provided the following:

Lisa Kaplewicz, the Corporate Director of Clinical Services at Personal Healthcare (PHC) effectively manages the complex and overlapping responsibilities of overseeing 21 facilities, assuming increased duties as a Regional Nurse at times and will continue the strategies outlined below in handling the new challenges posed by the ownership of a financially struggling facility with a two-(2)-star CMS rating. Lisa Kaplewicz leverages data platforms like Point Click Care and Simple LTC to monitor, manage, and improve clinical operations across the 21 PHC facilities while balancing Regional Nurse duties when warranted and scheduling on-site visits. By focusing on real-time analytics, QAPI-driven initiatives, and

flexible in-person and virtual meetings, Lisa Kaplewicz ensures compliance, drives quality improvements, and facilitates the turnaround of the newly acquired facility.

As Controller, Israel Ostrovitsky is responsible for assisting with the business office operations of the above facilities, including collaborating with accounts receivable, accounts payable, payroll, and accounting departments, as well as reviewing reimbursement rates, analyzing financial statements, and dealing with financial institutions for loans and mortgages. These responsibilities do not include any involvement with clinical operations. Nevertheless, during his tenure, and through the use of standards of efficiency and coordination that Israel has put in place, a number of facilities that were economically troubled prior to the changes of ownership that brought them into the group of facilities with which Personal Healthcare is involved have stabilized, despite the severe challenges faced during COVID and generally given the rural/Upstate location of many of these facilities.

Quality Review

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

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 Months or More	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Lisa Kaplewicz	0	0	N/A	0	N/A
Israel Ostrovitsky	0	0	N/A	0	N/A

*Duration of Ownership as of 04/10/2025

Data date: 01/2025

The proposed owners have disclosed they have no ownership interest in healthcare facilities. The following information is being presented for informational purposes related to the healthcare facilities in which the proposed owners have claimed experience as employees of Personal Healthcare LLC. The following information is not subject to star rating portfolio assessment under 10 NYCRR §600.2(b)(5)(iv).

New York. The proposed owners have experience with 18 facilities in New York. Six facilities have a CMS overall quality rating of average or higher. 12 facilities have a CMS overall quality rating of below average or much below average.

Dunkirk Rehab & Nursing Center and Salamanca Rehab & Nursing Center:

These facilities were acquired on January 1, 2023, by individuals with whom Lisa Kaplewicz is affiliated. Lisa covered as the Regional Nurse in the region where these facilities are for an extended period of time while the designated Regional Nurse was on a leave of absence.

Dunkirk's annual recertification survey was completed in December 2023, during the time Lisa Kaplewicz was covering for the Regional Nurse; the survey resulted in two (2) low-level scope/severity deficiencies (D Level). The Health Inspection domain continues to reflect deficiencies identified during the 2021 and 2022 annual inspection surveys, prior to acquisition by individuals with whom Lisa Kaplewicz is affiliated. The current Health Inspection rating reflects these deficiencies which are heavily weighted due to their scope and severity, despite improved survey outcomes under Lisa Kaplewicz's direct guidance. As described above, the Health Inspection rating significantly impacts the Overall star rating for the facility.

Salamanca's annual recertification survey was completed in September 2023 and resulted in five (5) low-level scope/severity deficiencies, two (2) of which were not related to Lisa Kaplewicz's involvement. One (1) deficiency was related to paper compliance and there were two (2) isolated clinical deficiencies that resulted in no negative impact on the resident involved. The current Health Inspection rating of two (2)

stars continues to reflect the health inspection surveys under the previous ownership. A full-time Nurse Practitioner was recently hired to collaborate with the clinical team and ensure the highest standards of care.

Delhi Rehab & Nursing Center:

This facility was acquired in January 2018 by individuals with whom Lisa Kaplewicz is affiliated. The facility is currently pending a health inspection survey; the last survey was on February 2, 2022. During Lisa Kaplewicz's period of involvement at Delhi, the facility recently hired a new Administrator with an excellent reputation who lives local to the facility. The new leadership is expected to significantly aid in the recruitment and retention of staff, addressing the challenges associated with being a very rural facility, and a favorable health inspection is anticipated.

Ghent Rehab & Nursing Center:

This facility was acquired in January 2020 by individuals with whom Lisa Kaplewicz is affiliated. The annual recertification survey was completed in September 2023 and resulted in low-level scope/severity deficiencies; three (3) of six (6) deficiencies were not related to clinical administration. Lisa Kaplewicz has helped to hire and train a new Regional Nurse to guide the facility and provide on-site quality assurance, risk assessment, and support to the Director of Nursing/clinical team. The Health Inspection rating has been significantly impacted by annual and complaint health inspection surveys that occurred during the tenure of leadership that are no longer present. In addition to the Regional Nurse, a new Administrator, Director of Nursing, Regional Nurse, Medical Director, and Nurse Practitioner have been hired.

Alpine Rehabilitation & Nursing Center:

This facility was acquired in July 2009 by individuals with whom Lisa Kaplewicz is affiliated. The facility recently hired a new Administrator who, in collaboration with the Director of Nursing and Regional Nurse, is utilizing standards and initiatives, similar to those implemented in Tarrytown, to improve the star ratings. The facility maintains favorable Health Inspection and Quality Measure ratings of three (3) stars. The new Administrator is focused on the recruitment and retention of staff, which is expected to result in a more favorable Staffing rating.

Auburn Rehab & Nursing Center:

This facility was acquired in February 2016 by individuals with whom Lisa Kaplewicz is affiliated. The facility's most recent survey was completed in February 2023 and resulted in six (6) low-level, isolated deficiencies that had no negative impact on residents. A new Director of Nursing with an excellent reputation was recently hired. With Lisa Kaplewicz's guidance, the Regional Nurse is working closely with the Director of Nursing to ensure the highest quality of care and services. The facility has implemented different strategies to mitigate healthcare personnel staffing shortages. The facility is predicted to increase its Quality Measures rating to two (2) by the end of the quarter. Lisa Kaplewicz continues to work with the Regional Nurse to address all Quality Measures categories in an effort to maintain the upward trend.

Gowanda Rehab & Nursing Center:

This facility was acquired in June 2018 by individuals with whom Lisa Kaplewicz is affiliated. The facility had a survey in July 2023 that resulted in a deficiency with IJ level scope and severity deficiencies. Since the IJ deficiency, there were two (2) complaint surveys that resulted in the complaints being unsubstantiated. The IJ deficiency continues to have significant implications on the current Health Inspection star rating and will continue to impact the facility despite improved outcomes. A new Director of Nursing was hired following the IJ in July 2023. The Regional Nurse is working closely with the Director of Nursing to address the issues that led to the IJ and to ensure the highest quality of care and services. Lisa Kaplewicz continues to work with the Regional Nurse to address all Quality Measures categories as well as healthcare personnel staffing shortages.

Highland Rehab & Nursing Center:

This facility was acquired in February 2013 by individuals with whom Lisa Kaplewicz is affiliated. The facility's most recent survey was completed in August 2023 and resulted in 10 low-level deficiencies that had no negative impact on residents. Five (5) of the deficiencies were paper compliance, two (2) were related to environment, two (2) were related to dietary services and one (1) was an isolated concern related to one resident's treatment order. A new Administrator, Medical Director, and full-time Nurse

Practitioner have been hired to collaborate with the clinical team and to ensure the highest standards and quality of care.

Massena Rehab & Nursing Center:

This facility was acquired in April 2019 by individuals with whom Lisa Kaplewicz is affiliated. The facility had a survey in June 2023 that resulted in two (2) deficiencies with G level scope and severity deficiencies. This was an isolated concern that continues to greatly impact the Health Inspections rating and Overall rating. Another survey was done in December 2023 and resulted in low-level deficiencies, with only one (1) of the deficiencies related to clinical administration. Massena is a rural facility, which presents inherent challenges in recruiting staff due to its location. To address these challenges, the facility has implemented aggressive measures, including partnering with a vendor to secure international nurses. Despite these efforts, the recruitment process remains difficult due to the limited local talent pool and the remote nature of the area.

Plattsburgh Rehab & Nursing Center:

This facility was acquired in January 2016 by individuals with whom Lisa Kaplewicz is affiliated. The facility is currently pending a survey; its most recent survey was completed in September 2021, which resulted in four low-level scope and severity deficiencies with no actual harm. A new position of Nurse Practitioner was recently established and filled and a new Medical Director was hired. These new hires are actively addressing quality measures with the clinical team. It is anticipated that these efforts will result in better survey outcomes.

Sodus Rehab & Nursing Center:

This facility was acquired in February 2016 by individuals with whom Lisa Kaplewicz is affiliated. The facility is currently pending a health inspection survey; the last annual recertification survey health inspection was on November 2, 2022. The facility had a survey on October 3, 2022 that resulted in a deficiency with IJ level scope and severity deficiencies. This was an isolated concern that continues to greatly impact the Health Inspection rating. A new Administrator, Director of Nursing, Medical Director, Nurse Practitioner, and Regional Nurse were hired subsequent to the last survey to work in collaboration with the clinical team to address issues in the facility that led to the IJ deficiency. It is anticipated that improvements made by these new hires will be reflected in the outcome of the pending survey.

Utica Rehabilitation & Nursing Center:

This facility was acquired in February 2015 by individuals with whom Lisa Kaplewicz is affiliated. The facility's most recent health inspection survey was in March 2023 and resulted in deficiencies with low-level scope and severity with no harm or negative impact on residents. Two (2) deficiencies were related to paper compliance, one (1) deficiency was related to the pest control program, three (3) deficiencies were related to the dietary department, and one (1) deficiency was related to storage/labeling of medication for one (1) resident. A new Medical Director and attending physician have been hired to collaborate with the clinical team and to ensure the highest standards and quality of care. The facility maintains a favorable Quality Measure domain rating of three (3) stars.

Massachusetts. The proposed owners have experience with three facilities in Massachusetts. One facility has a CMS overall quality rating of average or higher. Two facilities have a CMS overall quality rating of below average or much below average.

Medford Rehabilitation & Nursing Center:

This facility was acquired in January 2012 by individuals with whom Lisa Kaplewicz is affiliated. Lisa Kaplewicz is working with the Regional Nurse and the Director of Nursing and will allocate time as needed for an on-site auditing/mock survey to prepare for future health inspection surveys, and to ensure continued improvements to maintain or increase the Quality Measures rating, currently at four (4) stars.

The Rehabilitation & Nursing Center at Everett:

This facility was acquired in January 2013 by individuals with whom Lisa Kaplewicz is affiliated. Lisa Kaplewicz is working with the Regional Nurse and is planning to allocate time for an on-site auditing/mock survey and to work on a plan to ensure the highest standards and quality of care; favorable outcomes are anticipated.

Facility	Corporate Director of Clinical Services/Controller Since*	Overall	Health Inspection	Quality Measure	Staffing
New York					
Wells Nursing Home Inc.	Subject Facility	**	**	***	****
Alpine Rehabilitation and Nursing Center	Current	**	**	***	***
	07/2012 (PHC acquired 07/2009)	***	***	*	****
Norwich Rehabilitation & Nursing Center	Current	***	****	***	*
	07/2012	**	**	****	***
Tarrytown Rehabilitation and Nursing Center	Current	***	***	****	***
	07/2012	****	****	****	**
Highland Rehabilitation and Nursing Center	Current	*	**	***	*
	02/2013	*	**	***	*
Plattsburgh Rehabilitation and Nursing Center	Current	*	**	***	*†
	01/2016	*	**	*	***
Utica Rehabilitation & Nursing Center	Current	*	*	****	**
	02/2015	**	*	**	****
Auburn Rehabilitation & Nursing Center	Current	*	*	**	**
	03/2016	**	*	***	****
Sodus Rehabilitation & Nursing Center	Current	*	*	*	***
	02/2016	***	***	****	***
Delhi Rehabilitation and Nursing Center	Current	*	*	**	**
	01/2018*	*	*	*	*
Yorktown Rehabilitation & Nursing Center	Current	***	***	****	***
	04/2018	*****	*****	*****	**
Gowanda Rehabilitation and Nursing Center	Current	*	*	****	***
	06/2018	*	**	****	*
Orchard Rehabilitation & Nursing Center	Current	****	***	*****	**
	06/2018	*	*	****	*
Massena Rehabilitation & Nursing Center	Current	*	*	**	*
	04/2019	*	*	*	****
	Current	*	*	***	***

Facility	Corporate Director of Clinical Services/Controller Since*	Overall	Health Inspection	Quality Measure	Staffing
Ghent Rehabilitation & Nursing Center	01/2020	*	*	****	***
Dunkirk Rehabilitation & Nursing Center	Current	**	*	*****	*****
	01/2023	**	*	*****	*
Eden Rehabilitation & Nursing Center	Current	*****	*****	**	*****
	01/2023	****	****	***	**
Houghton Rehabilitation & Nursing Center	Current	**	**	**	***
	01/2023	**	***	***	*
Salamanca Rehabilitation & Nursing Center	Current	**	**	****	***
	01/2023	*	*	**	*
Massachusetts					
Cambridge Rehabilitation & Nursing Center	Current	*****	*****	***	***
	07/2012	**	**	**	***
Medford Rehabilitation and Nursing Center	Current	*	*	**	*****
	07/2012	*	*	****	***
The Rehabilitation & Nursing Center at Everett	Current	**	**	***	*****
	01/2013	**	*	****	*****

Data Date: 01/2025

*Please Note: Lisa Kaplewicz and Israel Ostrovitsky serve as the Corporate Director of Clinical Services and Controller, respectively, not the operator, of these facilities and are not subject to star portfolio assessment under 10 NYCRR §600.2(b)(5)(iv).

*Newly built facility; data available starting 04/2019.

†This facility reported a high number of days without a registered nurse on site.

End-Dated Facilities					
Facility	Regional Nurse/Director of Nursing Services*	Overall	Health Inspection	Quality Measure	Staffing
New York					
End-Dated as Regional Nurse					
Tarrytown Hall Care Center	09/2017	****	****	****	***
	12/2011	***	***	****	***
Norwich Rehabilitation & Nursing Center	09/2017	**	**	**	***
	12/2011	****	***	*****	**
	09/2017	**	**	**	***

End-Dated Facilities					
Facility	Regional Nurse/Director of Nursing Services*	Overall	Health Inspection	Quality Measure	Staffing
Alpine Rehabilitation and Nursing Center	12/2011	**	**	**	**
End-Dated as Director of Nursing Services					
Tarrytown Hall Care Center	12/2011	***	***	****	***
	04/2006 (CMS ratings started 01/2009)	**	***	****	*

**Please Note: Lisa Kaplewicz served as the Regional Nurse/Director of Nursing Services, not the operator, of these End-Dated Facilities.*

Enforcement History

New York

A review of the operations of Tarrytown Hall Care Center for the time period indicated above, while Lisa Kaplewicz was the Regional Nurse/Director of Nursing Services reveals the following:

- The facility was assessed a federal CMP on 03/19/2007 under F309 (Quality of Care) at a G level.

A review of the operations of Tarrytown Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Alpine Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Regional Nurse/Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$650 on 07/19/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-22-034 for surveillance findings on 05/29/2020. Deficiencies were found under 10 NYCRR §415.4(b)(2) – Staff Treatment of Residents and §415.12(h)(1) and (2) – Quality of Care, Accident-Free Environment. The facility failed to ensure that alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the Department of Health in accordance with §2803-d of the Public Health Law. In addition, the facility failed to ensure the resident environment remained as free of accident hazards as possible, and that each resident received adequate supervision to prevent accidents. The facility was also assessed a federal CMP of \$7,433 on 05/29/2020 under F689 at a G level.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-16-036 for surveillance findings on 03/06/2014. Deficiencies were found under 10 NYCRR §415.26 – Administration.

A review of the operations of Norwich Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Regional Nurse/Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 for surveillance findings on 12/03/2024. Deficiencies were found under 10 NYCRR §400.21(c) – Advance Directives. The facility failed to ensure compliance with the requirements of law governing advance directives. The facility was also assessed a federal CMP of \$15,590.25 under F578 at a J level.
- The facility was assessed federal CMPs of \$4,938 on 02/20/2024, \$4,938 on 02/12/2024, \$4,938 on 01/08/2024, and \$4,587 on 01/02/2024, \$3,645 on 04/18/2022, \$3,314 on 02/14/2022, \$2,982 on 01/31/2022, \$2,620 on 12/20/2021 (offset to FL), \$2,293 on 08/30/2021 (offset to FI), \$1,965 on 08/09/2021, \$1,625 on 07/05/2021, \$1,300 on 05/17/2021, \$975 on 03/01/2021 and \$655 on 06/08/2020 under F884 at a F level for failure to report COVID data.

- The facility was assessed federal CMPs of \$14,813 (offset to FL) on 02/06/2024, 01/30/2024, and 01/22/2024 as well as \$13,410 on 12/26/2023, 12/18/2023, and 12/11/2023 under F884 at a F level for failure to report COVID data.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-159 for surveillance findings on 07/09/2021. Deficiencies were found under 10 NYCRR §400.2 – Other laws, codes, rules, and regulations and 415.19(a)(1) and (2) – Infection Control. The facility failed to maintain an infection control program by failing to implement and practice required hand hygiene upon interaction with residents (5 violations at \$2,000). The facility was also assessed a federal CMP of \$5,060 on 07/09/2021 under F880 at a D level.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-142 for surveillance findings on 12/21/2020. Deficiencies were found under 10 NYCRR §400.2 – Other laws, codes, rules, and regulations and 415.19(a)(1-2) – Infection Control and Governor's Executive Order 202.11.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-055 for surveillance findings on 09/12/2017. Deficiencies were found under 10 NYCRR §415.12 – Quality of Care. The facility was also assessed a federal CMP of \$7,023 on 09/12/2017 under F309 at a G level.

A review of the operations of Highland Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$658 on 01/17/2022 under F884 at an F level for failure to report COVID data.

A review of the operations of Plattsburgh Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$650 on 11/15/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-014 for surveillance findings on 02/29/2016. Deficiencies were found under 10 NYCRR §415.12 – Quality of Care Highest Practicable Potential.

A review of the operations of Utica Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-23-072 for surveillance findings on 03/08/2023. Deficiencies were found under 10 NYCRR §415.19(b)(4) – Infection Control - Handwashing. The facility failed to establish and maintain an infection prevention and control program with regard to a resident's alleged treatment.
- The facility was assessed federal CMPs of \$1,300 on 07/05/2021, \$983 on 06/28/2021, and \$655 on 06/21/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-232 for surveillance findings on 09/23/2021. Deficiencies were found under 10 NYCRR §415.19(a) – Infection Control. Specifically, a CNA reported feeling ill when self-screened at the beginning of their shift and was permitted to remain at the facility and provide care to residents. This CNA was observed on COVID-19 exposed, COVID-19 positive, and on COVID-19 negative units. This CNA tested positive for COVID-19 after an antigen test (point of care, rapid test) was completed four hours after beginning work.
- The facility was fined \$4,700 pursuant to Stipulation and Order NH-23-030 for surveillance findings for the period 12/10/2020 to 04/20/2021. Deficiencies were found under 10 NYCRR §415.19(f) – Infection Control. The facility failed to possess and maintain a 60-day supply of all necessary items of personal protective equipment (PPE) on ninety-four days during the period December 10, 2020 to April 20, 2021.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-021 for surveillance findings on 12/21/2018. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) – Resident behavior and facility practices (staff treatment of residents). The facility was also assessed a

federal CMP of \$115,388 on 12/21/2018 under F600 at a G level for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-010 for surveillance findings on 09/18/2018. Deficiencies were found under 10 NYCRR §415.12(c)(2) – Quality of Care – Pressure Sores with Admission. The facility was also assessed a federal CMP of \$41,340 on 09/18/2018 under F686 at a G level for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-040 for surveillance findings on 07/18/2018. Deficiencies were found under 10 NYCRR §415.12(h)(2) – Quality of Care – Accident-Free Environment. The facility was also assessed a federal CMP of \$13,150 on 07/18/2018 under F689 at a G level.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-18-001 for surveillance findings on 06/30/2017, 12/21/2016, and 03/25/2016. Deficiencies were found under 10 NYCRR §415.4(b)(3) – Resident behavior and facility practices (staff treatment of residents/investigate violations). The facility was also assessed a federal CMP of \$11,732 on 06/30/2017 under F490 at a K level for failure to make sure that the facility is administered in an acceptable way that maintains the well-being of each resident as well as under F323 at a K level for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents.
- The facility was assessed a federal CMP on 03/25/2016 under F314 at a G level for failure to give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores.

A review of the operations of Auburn Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$17,000 pursuant to Stipulation and Order NH-22-107 for surveillance findings on 04/28/2022. Deficiencies were found under 10 NYCRR §2.61 – Prevention of COVID-19 transmission by covered entities and 415.19 – Infection Control. Specifically, the facility permitted CNA #16, who is not fully vaccinated against COVID-19, to work sixteen days. TNA #17, likewise not fully vaccinated, was observed working at the facility and in proximity to residents on 04/28/2022.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-081 for surveillance findings on 06/05/2019. Deficiencies were found under 10 NYCRR §415.12(k)(6) – Quality of Care, Special Needs (Respiratory Care). The facility was also assessed a federal CMP of \$7,036 on 06/05/2019 under F695 at a G level.

A review of the operations of Sodus Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-23-027 for surveillance findings on 10/03/2022. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) – Resident behavior and facility practices (staff treatment of residents). Specifically, the facility failed to protect each resident from physical abuse in that it failed to appropriately and timely: investigate and report a report of abuse; and remove abusive staff from assignments. The facility was also assessed a federal CMP of \$76,128 on 10/03/2022 under F600 at a K level for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.
- The facility was assessed a federal CMP of \$650 on 06/21/2021 under F884 at an F level for failure to report COVID data.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-21-099 for surveillance findings on 06/17/2020. Deficiencies were found under Executive Order 202.18. Specifically, the facility failed to notify family members or next of kin within 24 hours when staff were diagnosed with COVID-19.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-20-073 for surveillance findings on 09/23/2020. Deficiencies were found under 10 NYCRR §415.19(a)(3) Infection Control.

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-036 for surveillance findings on 03/14/2019. Deficiencies were found under 10 NYCRR §415.12(c)(1) Quality of Care – Pressure Sores – Prevention. The facility was also assessed a federal CMP on 03/14/2019 (in conjunction with the 02/15/2019 CMP) under F686 at a G level for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-041 for surveillance findings on 02/15/2019. Deficiencies were found under 10 NYCRR §415.12 Quality of Care. The facility was also assessed a federal CMP of \$57,885 on 02/15/2019 under F684 at a G level for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals.

A review of the operations of Delhi Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$9,750 on 01/07/2022 for multiple deficiencies including failure to provide and implement an infection prevention and control program under F880 at a D level.
- The facility was fined \$16,000 pursuant to Stipulation and Order NH-21-156 for surveillance findings on 12/12/2021 and 12/11/2020. Deficiencies were found under 10 NYCRR §415.19(a)(1) and (2) Infection Control. The facility failed to maintain an infection control program by failing to enforce PPE and hand hygiene requirements for entering and exiting "droplet precaution" areas of the facility and by failing to enforce required PPE use (N95 Mask) while performing staff testing.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-20-015 for surveillance findings on 09/18/2019. Deficiencies were found under 10 NYCRR §415.12 Quality of Care – Highest Practicable Potential. The facility was also assessed a federal CMP of \$47,554 on 09/18/2019 under F684 at a G level.

A review of the operations of Yorktown Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Gowanda Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-24-025 for surveillance findings on 07/25/2023. Deficiencies were found under 10 NYCRR §415.12(h)(2) – Quality of Care. The facility failed to provide adequate supervision to prevent accidents. Specifically, the facility failed to properly supervise a resident with a history of unsafe wandering. As a result, the resident had eight (8) documented falls from 03/04/2023 to 07/21/2023. Changes to the plan have been ineffective. The facility was also assessed a federal CMP of \$61,162 on 07/25/2023 under F689 at a J level.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 for surveillance findings on 12/04/2020. Deficiencies were found under 10 NYCRR §415.19(a)(1) – Infection Control and 10 NYCRR 400.2 – Other Laws, Codes, Rules and Regulations. The facility failed to obtain COVID-19 specimen results within 48 hours for three staff members and failed to document facility efforts to obtain the delayed COVID-19 specimen results (3 citations at \$2,000/each).
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-044 for surveillance findings on 06/26/2019. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) – Abuse. The facility failed to prevent verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion of residents. The facility was also assessed a federal CMP of \$7,036 on 06/26/2019 under F600 at a G level.

A review of the operations of Orchard Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH-21-089 for surveillance findings on 02/02/2021. Deficiencies were found under 10 NYCRR §415.19(a)(1) and (2) Infection Control. The facility failed to maintain an infection control program by allowing employees to work shifts at the facility in excess of 12 hours who were not screened for COVID-19 and the facility also failed to observe transmission-based precautions by failing to change PPE following interactions with COVID positive residents.

A review of the operations of Massena Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed federal CMPs of \$14,813 (Offset to FL) on 02/12/2024, 02/06/2024 and 01/30/2024, \$13,636 on 01/02/2024, 12/26/2023 and 12/18/2023 as well as \$5,292 (Offset to FI) on 05/15/2023, 05/08/2023 and 05/02/2023 under F884 at a F level for failure to report COVID data.
- The facility was assessed federal CMPs of \$4,938 on 01/08/2024, \$4,235 on 06/26/2023, \$3,882 (Offset to FL) on 06/20/2023, \$3,529 on 06/12/2023, \$3,176 on 06/05/2023, \$2,823 on 05/30/2023, \$2,470 on 05/23/2023, \$987 on 03/28/2022 and \$650 on 07/13/2020 under F884 at a F level for failure to report COVID data.
- The facility was fined \$20,000 pursuant to Stipulation and Order NH-23-098 for surveillance findings on 06/28/2023. Deficiencies were found under 10 NYCRR §415.12 Quality of Care and 10 NYCRR §415.12(c)(2) Quality of Care – Pressure Sores. Specifically, the facility failed to ensure a resident with a diabetic ulcer wound received treatment and care in accordance with professional standards of practice. The resident developed osteomyelitis infection in the foot bone that worsened requiring hospitalization and was considered for possible amputation of the foot. In addition, the facility failed to ensure two residents with pressure ulcers on the feet received treatment and care in accordance with professional standards of practice. One resident's injuries worsened requiring hospitalization for osteomyelitis infection in the bone on both feet. Another resident's injuries worsened to coccyx pressure ulcers and deep tissue injuries. The facility was also assessed a federal CMP of \$46,742 on 06/28/2023 under F684 at a G level and F686 at a G level.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-21-102 for surveillance findings on 01/21/2021. Deficiencies were found under 10 NYCRR §415.19(b)(4) Infection Control – Hand Hygiene. The facility failed to ensure staff members performed hand hygiene before and after all resident contact, and before putting on and after removing PPE.

A review of the operations of Ghent Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-24-055 for surveillance findings on 10/27/2022. Deficiencies were found under 10 NYCRR §415.12(c)(1) Quality of Care – Pressure Ulcers and §415.12(m)(2) Quality of Care – No Significant Medication Errors. For §415.12(c)(1), the facility failed to ensure that a resident who was admitted with an open wound was not properly monitored or treated. Shortly after admission, the resident developed a new wound that was likewise not monitored or treated. These failures resulted in the resident expiring from septic shock. For §415.12(m)(2), the facility failed to ensure that a resident received prescribed medication to prevent blood clots. This failure resulted in the resident suffering a stroke, which resulted in actual harm to the resident. The facility was also assessed a federal CMP of \$67,746 on 10/27/2022 under F686 at a G level and F760 at a G level. The facility failed to provide appropriate pressure ulcer care and prevent new ulcers from developing and failed to ensure that residents are free from significant medication errors.
- The facility was assessed federal CMPs of \$3,289 on 02/28/2022, \$2,960 on 01/24/2022, \$2,621 on 08/30/2021, \$2,293 on 08/23/2021, \$1,950 on 08/16/2021, \$1,625 on 06/21/2021, \$1,300 on 03/01/2021, \$983 on 02/22/2021 and \$655 on 01/25/2021 for failure to report COVID data under F884 at a F level.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-131 for surveillance findings on 02/16/2021. Deficiencies were found under 10 NYCRR §415.12(h)(1) & (2) Quality of Care – Accident-Free Environment. The facility failed to ensure the resident environment

remains as free of accident hazards as possible and that each resident receives adequate supervision and assistive devices to prevent accidents. Specifically, the facility failed to protect a resident from serious injury when it failed to properly assess the resident's risk of elopement, and, when it failed to ensure that door alarms, which could have alerted staff when opened, were on and working properly. As a result, the resident was able to exit the facility undetected and was later found with hypothermia from the prolonged exposure to freezing temperatures. The facility was also assessed a federal CMP of \$7,345 on 02/16/2021 under F689 at a G level.

A review of the operations of Dunkirk Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Eden Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

A review of the operations of Houghton Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$111,200 on 10/27/2024 under F600 at a G level for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.

A review of the operations of Salamanca Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals no enforcements.

Massachusetts

A review of the operations of Cambridge Rehabilitation & Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$3,250 on 04/07/2022. The facility failed to provide and implement an infection prevention and control program under F880 at a D level.
- The facility was assessed federal CMPs of \$3,645 on 01/24/2022, \$3,276 on 09/20/2021, \$2,948 on 08/30/2021, \$2,621 on 08/23/2021, \$2,293 on 08/16/2021, \$1,965 on 08/09/2021, \$1,625 on 08/02/2021, \$1,310 on 07/26/2021, \$975 on 07/19/2021 and \$655 on 04/19/2021 for failure to report COVID data under F884 at a F level.

A review of the operations of Medford Rehabilitation and Nursing Center for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$15,593 on 05/25/2023 for multiple deficiencies including the following: The facility failed to create and put into place a plan for meeting the resident's most immediate needs within 48 hours of being admitted under F655 at a G level; provide appropriate treatment and care according to orders, resident preferences and goals under F684 at a G level; ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a G level.
- The facility received a federal citation on 11/16/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a G level.
- The facility was assessed a federal CMP of \$9,770 on 10/12/2022 for multiple deficiencies including the facility's failure to provide appropriate treatment and care according to orders, resident's preferences, and goals under F684 at a D level.
- The facility was assessed a federal CMP of \$79,248 on 07/05/2022 for multiple deficiencies. The facility failed to ensure services provided by the nursing facility meet professional standards of quality under F658 at a J level; provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and resident's advance directives

under F678 at a J level; provide safe, appropriate pain management for a resident who requires such services under F697 at a G level.

- The facility was assessed a federal CMP of \$9,750 on 02/03/2022. The facility failed to provide and implement an infection prevention and control program under F880 at an E level.
- The facility was assessed a federal CMP of \$95,498 and \$15,343 on 04/27/2021 for multiple deficiencies including the facility's failure to provide appropriate treatment and care according to orders, resident's preferences, and goals under F684 at a G level.

A review of the operations of The Rehabilitation & Nursing Center at Everett for the time period indicated above, while Lisa Kaplewicz was the Corporate Director of Clinical Services and Israel Ostrovitsky was the Controller, reveals the following:

- The facility was assessed a federal CMP of \$34,886 and a payment denial on 08/11/2022. The facility failed to honor the resident's right to a safe, clean, comfortable, and homelike environment, including but not limited to receiving treatment and support for daily living safely under F584 at an F level.

Additional Information

Business Transactions with Personal Healthcare LLC

Certain business relationships exist between the current operator and persons who are employees of or owners of Personal Healthcare (PHC). This includes but may not be limited to a Chief Restructuring Officer and Guaranteed Corporate Bonds. The applicants have provided assurances that current business relationships between the facility and Personal Healthcare (PHC) will terminate upon completion of this transaction. A condition is being recommended to ensure disclosure to the Department of Health should obligations from such business transactions be transferred to the proposed operator.

Adult Day Health Care Program (ADHCP) and Outpatient Therapy Services

The facility is currently licensed to provide ADHCP and outpatient therapy services. The services have not been fully operational since 2019 due to the COVID-19 pandemic. The applicants plan to resume the operation of the ADHCP and outpatient therapy services upon approval of this application. A review was conducted of the services as part of the CON program review and did not reveal concerns with restarting the services in the space previously used at the facility. The services will be provided in a manner that is consistent with the requirements of each service. Outpatient therapy services will provide a resource for individuals in need of rehabilitation services but not requiring an inpatient stay. ADHCP will provide an alternative that is intended to keep individuals at home and in the community for as long as possible. The Financial Analysis section of this exhibit includes projections assuming the resumption of these services.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the Current Year (2023) results, and the first- and third-year operating budgets, in 2025 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Inpat. Revenues	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Commercial FFS	\$259.00	\$1,554	\$0	\$0	\$0	\$0
Medicare FFS	\$765.08	529,437	\$630.00	2,427,390	\$630.00	2,427,390
Medicare MC	\$258.92	283,000	\$425.00	982,600	\$425.00	982,600
Medicaid FFS	\$179.93	4,293,918	\$169.65	4,052,393	\$169.65	4,052,393
Medicaid MC	\$258.92	139,040	\$0	0	\$0	0
Private Pay	\$418.70	<u>1,651,342</u>	\$400.00	<u>1,849,600</u>	\$400.00	<u>1,849,600</u>
Total Inpat. Rev.		\$6,898,291		\$9,311,983		\$9,311,983
Outpat. Revenues	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$0	\$0	\$84.42	\$40,100	\$84.42	\$40,100
Medicaid FFS	\$0	0	\$88.26	233,800	\$88.26	233,800
Private Pay	\$0	<u>0</u>	\$84.54	<u>17,500</u>	\$84.54	<u>17,500</u>
Total Outpat. Rev.		\$0		\$291,400		\$291,400
Net Pt. Revenues		\$6,898,291		\$9,603,383		\$9,603,383
Other Oper. Rev.*		<u>2,999,327</u>		<u>429,246</u>		<u>429,246</u>
Total Revenues		\$9,897,618		\$10,032,629		\$10,032,629
<u>Inpat. Expenses</u>						
Operating	\$356.40	\$10,740,476	\$261.31	\$9,061,273	\$261.31	\$9,061,273
Capital	<u>\$4.97</u>	<u>149,857</u>	<u>\$20.15</u>	<u>698,570</u>	<u>\$20.15</u>	<u>698,570</u>
Total Expenses	\$361.37	\$10,890,333	\$281.46	\$9,759,843	\$281.46	\$9,759,843
<u>Outpat. Expenses</u>						
Operating	\$0	\$0	\$73.85	\$245,993	\$73.85	\$245,993
Capital	<u>\$0</u>	<u>0</u>	<u>\$0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expenses	\$0	\$0	73.85	\$245,993	\$73.85	\$245,993
Net Income		<u>(\$992,715)</u>		<u>\$26,792</u>		<u>\$26,972</u>
Patient Days		30,136		34,676		34,676
Visits		0		3,331		3,331
Occupancy		82.56%		95.00%		95.00%

*Other Operating Revenue in the Current Year is comprised of \$2,846,729 in Employee Retention Credit revenue, \$144,704 in other revenue, \$5,800 in supplies sold to others, \$1,824 in cafeteria income, and \$270 in sold services. In Years One and Three, Other Operating Revenue is comprised of \$21,000 in supplies sold to others, \$5,000 in cafeteria revenue, \$25,000 from Fidelis Optum, \$1,000 in sold services, \$40,000 payroll income, \$1,000 vending machine income, and \$336,246 in assessments.

The following is noted with respect to the submitted budget:

- The Current Year reflects the facility's 2023 payors and 2023 Certified Financial Statements. Historical utilization for base year 2023 was 82.56%.
- In Years One and Three the applicant is projecting 2,031 Adult Day Health Care Program (ADHCP) visits and 1,300 outpatient therapy visits.
- Current year staffing is based on the actual staffing as reported on the 2023 RHCF-4 Cost Report. Staffing levels for Years One and Three increase as a result of the anticipated increase in services.

- The Medicaid reimbursement rate in Years One and Three is based on the facilities' 2023 Nursing Home Rate.
- The rates for Medicare, and Private Pay in Years One and Three are based upon the anticipated rates to be received by the facility.

Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient Utilization</u>			
Commercial FFS	0.02%	0.00%	0.00%
Medicare FFS	2.29%	11.11%	11.11%
Medicare MC	3.63%	6.67%	6.67%
Medicaid FFS	79.19%	68.89%	68.89%
Medicaid MC	1.78%	0.00%	0.00%
Private Pay	13.09%	13.33%	13.33%
All Other	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
Total	100.00%	100.00%	100.00%

<u>Outpatient Utilization</u>			
Commercial FFS	0.00%	14.26%	14.26%
Medicaid FFS	0.00%	79.53%	79.53%
Private Pay	<u>0.00%</u>	<u>6.21%</u>	<u>6.21%</u>
Total	100.00%	100.00%	100.00%

- Breakeven utilization is projected at 92.42% or 33,733 patient days for Years One and Three, respectively.
- The facility's Medicaid admissions of 30.4% in 2021 and 59.3% in 2022 exceeded Fulton County's 75% threshold rates of 22.7% for 2021 and 23.4% for 2022.

Operations Transfer and Privatization Agreement (OTA)

The applicant has submitted an executed OTA for the sale and purchase of property used in the operation of the RHCF. The terms of the agreement are summarized below:

Date:	May 17, 2023
Transferor:	Wells Nursing Home, Inc.
Transferee:	WRNC Operating, LLC
Acquired Assets:	Business and operation of the facility and all furniture, fixtures, furnishings equipment, appliances, tools, instruments, machinery, computers, computer equipment and hardware, office equipment, trucks, vehicles and other transportation equipment, parts, supplies, and other tangible personal property owned by transferor used in connection with the operation of the facility. All inventory and supplies located in the facility including but not limited to office, foodstuffs, medical, disposables, prescription medications, and pharmaceutical inventories and supplies, and articles of personal property used in connection with the facility. All contracts, agreements including admission agreements, leases, purchase orders, and other arrangements listed on Exhibit 2.1(c) to the extent assumed, by transferee. All menus, policies and procedures, operating manuals, training materials, marketing, sales and promotional materials, intellectual property including but not limited to patents, trademarks, service marks, copyrights, trade names, trade secrets, confidential know-how, and similar proprietary information, computer software owned by transferor, telephone and facsimile numbers used exclusively by the facility, all administrative records, financial books, and records, employee and payroll records including all books, records, files, computer software, data or databases, patient medical records, medical staff records, and medical/administrative libraries, licenses, certificates, permits, waivers, consents, authorizations, accreditations, certificates of occupancy, utility lease agreements,

	goodwill, patient funds held in trust, Medicare/Medicaid reimbursement agreements, all other assets and tangible personal property.
Excluded Assets:	Transferor shall retain, any right, title, and interest in the following assets (tangible or intangible) of transferor: cash and cash equivalents, certificates of deposit, money market funds, marketable securities, and funds deposited into payroll and operating accounts, licenses, and permits that are not assignable or transferrable to transferee, all prepaid expenses of transferor including insurance prepayments, any grants awarded by a government entity related to the operation of the facility prior to closing date, all refunds and reimbursements, all accounts receivable and rights to payments.
Assumed Liabilities:	All obligations and liabilities under the assumed contracts and the Medicaid, Medicare, and third-party payor agreements if any. Transferor shall retain all of its liabilities and obligations of any kind or nature, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether known or unknown, arising out of or by reason of the ownership or operation of the assets, the facility and/or the business prior to the closing date.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of February 21, 2025, the facility had no reported Medicaid liabilities. The purchase price of the operations is proposed to be satisfied with members' equity.

Contract of Sale (COS)

The applicant has submitted an executed COS for the sale and purchase of property used in the operation of the RHCf. The terms of the agreement are summarized below:

Date:	May 17, 2023
Buyer:	WRNC Realty, LLC
Seller:	Wells Nursing Home, Inc.
Acquired Assets:	All of the real property upon which the business is located, together with all rights, title, and interest of seller in the buildings, fixtures and improvements, and land. All tenements, hereditaments, rights, privileges, interest, easements, licenses and other rights. All equipment, furniture, furnishings, appliances, tools, instruments, fixtures, machinery, computers, computer equipment and hardware, office equipment, trucks, vehicles, and other transportation equipment, and other tangible personal property owned by the seller, all assignable or transferable licenses, certificates, permits, waivers, certificates of occupancy, accreditations owned or held by the seller.
Excluded Assets:	All assets transferred pursuant to Nursing Home operations transfer and privatization agreement (OTA), assets excluded pursuant to OTA, and all equipment and assets identified in Exhibit 3.11.
Assumed Liabilities:	Seller shall retain off of its liabilities and obligations of any kind or nature, existing or asserted. Buyer is not the successor to liability of seller and is not assuming any liability arising from sellers' ownership of the assets. Buyer does not assume any payable of seller, governmental claim or charge, liability for any general malpractice, professional liability, resident rights, violations, violation of employee rights or contracts.
Purchase Price:	\$7,000,000
Payment of Purchase Price:	Seller shall give Buyer a credit of \$499,978.00 for the non-refundable deposit made by Buyer or Buyer's affiliate in connection with the submission of the Confirmation of Firm Offer, plus (B) the sum of \$555,417.23 (\$190,000 plus \$150,000 plus \$124,567 plus \$90,850.23) made by Buyer or Buyer's affiliate in

	connection with the amendment(s) to the Escrow Funding Agreement, plus (C) the sum of the amounts drawn from the additional \$944,604.77 delivered into escrow following execution of and pursuant to the OTA and that Pre-Closing Funding Agreement entered into between an affiliate of Buyer and Seller as of the date hereof and used for working capital of the Seller plus any additional amounts funded in connection with the Pre-Closing Funding Agreement prior to the OTA Closing.
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Executed Lease Agreement

The applicant has provided an executed lease agreement, the terms of which are summarized as follows:

Date:	October 8, 2024
Premises:	A 100-bed, skilled nursing home facility located at 1201 W. Madison Avenue, Johnstown, New York.
Lessor:	WRNC Realty, LLC
Lessee:	WRNC Operating, LLC
Term:	10 years, with an option to extend for an additional 1-year term, up to a total term of 20 years.
Rent:	Base rent: \$650,000 per year (\$54,166.66 per month)
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The applicant has submitted an affidavit stating that the lease is a non-arm's length agreement as there is a pre-existing business relationship between the members of the landlord and tenant.

Capability and Feasibility

There are no project costs associated with this application. There is no purchase price for the acquisition of operations. The purchase price for the real estate of \$7,000,000 will be met with equity of \$1,750,000 from the proposed realty members and a loan of \$5,250,000 at 8.5% interest for a five-year term and a payout period of 25 years. CIBC Bank has provided a letter of interest for the respective loans at the stated terms. Ephraim Zagelbaum submitted an affidavit indicating willingness to cover the balloon payment if re-financing is not available after the five-year term.

The working capital requirement is estimated at \$1,626,641 based on two months of the first-year expenses funded from equity by the applicant members. The total equity requirement for this project (CON 232241) and Clinton County Nursing Home (CON 231220) is \$2,823,568 and includes a projected first-year loss of \$13,207. Lisa Kaplewicz and Israel Ostrovitsky are estimated to have a shortfall in liquid assets to cover the working capital requirements for the above-mentioned projects of \$1,370,751 and \$1,195,964, respectively. The equity shortfall for both projects will be satisfied with personal loans. Ephraim Zagelbaum provided a letter of interest to Lisa Kaplewicz for a personal loan in the amount of \$1,500,000 with a ten-year term and an interest rate of 5% with no repayment requirement during the first three years. Alex Barth provided a letter of interest to Israel Ostrovitsky for a personal loan in the amount of \$1,500,000 with a ten-year term and an interest rate of 5% with no repayment requirement during the first three years. BFA Attachment A is the overall combined equity analysis for this transaction and shows the overall financial ability of all the parties involved to go forward with these projects.

The submitted budget projects a net income of \$26,792 in both Years One and Three, respectively. Revenue growth is based on the reduction of employee benefits in Years One and Three, and on the recovery of occupancy rates to pre-pandemic levels. Occupancy levels increased from 71.76% in December 2022 to 82.56% in December 2023, and as of November 2024, the occupancy level was 86.29%. BFA Attachment D is WRNC Operating, LLC's pro forma balance sheet, which shows the entity will start with \$1,667,639 in members' equity. The budget appears reasonable.

BFA Attachment C is Wells House Health System Inc.'s financial summary for 2022 through November 2024. During this time, the RHCF reported negative assets in 2023 and 2024, negative working capital, and operating losses. The losses are attributable to ongoing financial difficulties and a reduction in occupancy following the COVID-19 pandemic. The facility has also been working with the New York State Department of Health on a strategic assessment process. The facility received an award under the

Nursing Home Vital Access Provider Assurance Program (VAPAP) in August 2022 for financial relief necessary to maintain operations and services. Despite the assistance, the facility continued to experience financial problems and, on November 9, 2022, Wells Nursing Home, Inc. and Personal Healthcare, LLC, an entity with common ownership with WRNC Realty, LLC, entered into an Escrow Funding Agreement containing provisions for advances prior to the purchase of the real estate to mitigate operational losses. Even with the negative financial situation, the facility's occupancy continues to improve from pandemic levels. The new operator anticipates continued improvements in occupancy post-acquisition, thus mitigating the losses previously incurred due to the lower occupancy rates and the anticipated transition of ownership.

Conclusion

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A	Net Worth Summary of WRNC Operating LLC and WRNC Realty, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Financial Summary – Wells House Health System, Inc. 2021 – 2024 and 2023 Audited Financial Statements for
BFA Attachment D	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish WRNC Operating LLC as the new operator of Wells Rehabilitation and Nursing Center, a 100-bed Residential Health Care Facility currently operated by Wells Nursing Home, Inc. at 201 West Madison Avenue, Johnstown, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

232241 E

FACILITY/APPLICANT:

WRNC Operating LLC d/b/a Wells
Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of two rent reasonable letters from New York State realtors acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The proposed operator must provide notification to The Department of Health of any obligations arising from business transactions with persons acting as employees of or owners of Personal Healthcare LLC. [LTC]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



**Department
of Health**

**Public Health and Health
Planning Council**

Project # 202251-E

Hoosick Falls Center LLC d/b/a

Hoosick Falls Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Rensselaer
Acknowledged: January 25, 2021

Executive Summary

Description

Hoosick Falls Center, LLC, a New York limited liability company, requests approval to be established as the new operator of The Center for Nursing and Rehabilitation at Hoosick Falls, an 82-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) at 21 Danforth Street, Hoosick Falls (Rensselaer County). Hoosick Falls Health Center, Inc. (HFHC), a voluntary not-for-profit corporation, is the current operator, and SVHC-Hoosick Falls, LLC is the co-operator and sole member. SVHC-Hoosick Falls LLC has a passive parent, Southwestern Vermont Health Care Corporation (SVHC), a comprehensive healthcare system serving parts of Vermont, New York, and Massachusetts.

On March 13, 2024, Hoosick Falls Health Center, Inc. entered into an Operations Transfer Agreement (OTA) 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 (REPA) with Hoosick Propco, LLC, to sell and acquire the real property for \$2,250,000. The applicant will lease the premises from Hoosick Propco, LLC. Some members of the applicant and realty have common ownership.

The transactions will close simultaneously upon Public Health and Health Planning Council (PHHPC) approval.

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

Current Operator

Hoosick Falls Health Center, Inc. d/b/a The Center for Nursing and Rehabilitation at Hoosick Falls

Sole Corporate Member, Co-Operator:

SVHC-Hoosick Falls LLC 100%

Voluntary Not-For-Profit Corporation

Passive Member

Southwestern Vermont Health Care Corporation

Proposed Operator

Hoosick Falls Center, LLC d/b/a The Center for Nursing and Rehabilitation at Hoosick Falls

Members:

Mordejai Salamon 65%

Ariel Jaffa 12%

Penny Morgan 12%

Yehudis Klein 5%

Blimie Perlstein 5%

Stephen Bernier 1%

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. As of February 5, 2025, the facility reported 85.4% occupancy of staffed beds and Rensselaer County had 94.1% occupancy of staffed beds.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The purchase price for the RHCF operations is \$250,000, plus assumed liabilities, estimated to be under \$25,000, which will be

funded via members' equity. The real property purchase of \$2,250,000 will be funded with \$450,000 in members' equity and a self-amortizing 10-year \$1,800,000 loan at a 10-year UST +2.50% interest rate (approximately 6.35%). Eastern Union Healthcare Group has provided a letter of interest. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,078,004	\$9,167,980
Expenses	<u>8,990,836</u>	<u>9,088,213</u>
Net Income	\$87,168	\$79,767

Health Equity Impact Assessment

A Health Equity Impact Assessment was not required for this project under Public Health Law §2802-B, as it was received by the Department on December 11, 2020.

Recommendations

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

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

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of an executed loan commitment to purchase the real property, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].

Approval conditional upon:

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

Council Action Date
April 10, 2025

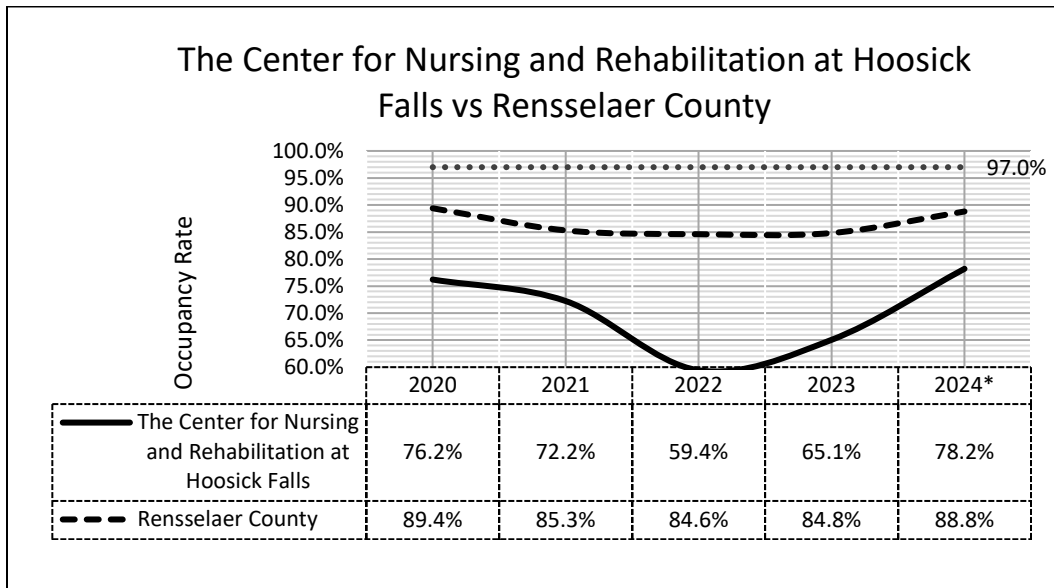
Need Analysis

Background and Analysis

The primary service area is Rensselaer County, which has a population projected to increase to 161,946 by 2030 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Rensselaer County	New York State
Total Population (2023 Estimate)	160,341	19,872,319
Hispanic or Latino (of any race)	5.9%	19.6%
White (non-Hispanic)	79.8%	53.4%
Black or African American (non-Hispanic)	6.3%	13.6%
Asian (non-Hispanic)	3.1%	8.8%
Other (non-Hispanic)	4.9%	4.6%

Source: American Community Survey (2023 5-year Estimates Data Profiles)



*2024 data is self-reported and not certified. Occupancy through 2023 is from the RHCF cost reports.

Based on weekly census data, the facility reported that 85.4% of its 82 licensed beds are staffed and occupied as of February 5, 2025. Rensselaer County had 95.4% of the county's 1,242 licensed beds staffed and 89.6% occupied for a 94.1% occupancy of staffed beds.

This facility is located in Hoosick Falls, which is approximately twelve miles from the Southwestern Vermont Medical Center. The applicant reports accepting 75% to 80% of its admissions from Southwestern Vermont's discharges of New York State residents. These individuals were residents of the facility's service area and want to return to the area where they have lived most of their lives and where they can maintain a close association with their families and their community.

The table below shows the CMS Rating and the utilization of the closest RHCFs to The Center for Nursing & Rehab at Hoosick Falls. There are five Nursing Homes within 20 miles, located in Vermont and Massachusetts. The other Nursing Homes that are located in NY State are about 20 to 35 miles away from the facility.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCFS	Occupancy			
	As of 1/2025		Miles/Time	2021	2022	2023	2024*
Center at Hoosick Falls	2	82	0 miles/0 mins	72.2%	59.4%	65.1%	78.2%
Troy Victorian Rehab & Nursing Care Center	1	120	24.7 miles/36 mins	87.0%	92.9%	94.7%	89.5%
Eddy Heritage	1	120	25.6 miles/36 mins	76.8%	83.8%	81.0%	87.5%
Eddy Memorial	1	80	25.8 miles/39 mins	91.1%	93.3%	95.5%	96.7%
Van Rensselaer Manor	2	362	30.2 miles/45 mins	76.7%	71.0%	70.5%	69.6%
Seton Health at Schuyler Ridge Residential Healthcare (Saratoga)	4	120	31 miles/47 min	91.1%	86.0%	93.0%	96.8%
Eddy Village Green (Albany)	4	192	27.9 miles/48 mins	82.2%	79.4%	81.2%	93.8%
Troy Center for Rehab & Nursing	1	78	29 miles/48 mins	97.1%	96.1%	95.3%	96.5%
Washington Center for Rehab and Healthcare (Washington)	3	122	20 miles/31 min	95.0%	97.6%	96.5%	96.7%

*2024 data is self-reported and not certified. Occupancy through 2023 is from the RHCFS cost reports.

The following table provides the Case Mix Index (CMI) for the facility and the surrounding RHCFS, which reflects the relative resources predicted to provide care to a resident. The higher the case mix index weight, the greater the resource requirements for the residents.

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Center at Hoosick Falls	1.159	1.041	1.0839	0.9974	1.1894	1.1912
Troy Victorian Rehab & Nursing Care Center	1.1375	1.0482	1.1986	1.1953	1.2397	1.2547
Eddy Heritage	1.239	1.037	1.2394	1.1897	1.2947	1.1834
Eddy Memorial	0.977	0.903	1.1181	1.0785	1.0967	1.0681
Van Rensselaer Manor	1.043	0.997	1.0595	1.0211	1.0023	0.9825
Seton Health at Schuyler Ridge Residential Healthcare (Saratoga)	1.2669	1.1045	1.2788	1.2125	1.203	1.1237
Eddy Village Green (Albany)	0.992	0.93	1.0525	1.0541	1.09	1.1016
Troy Center for Rehab and Nursing	1.34	1.251	1.374	1.3048	1.3337	1.3227
Washington Center for Rehab and Healthcare (Washington)	1.2286	1.1903	1.2502	1.2386	1.2237	1.2578

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;

- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs; and
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Rensselaer County rate for 2021-2023.

Medicaid Access	2021	2022	2023
Rensselaer County Total	38.3%	44.5%	45.7%
<i>Rensselaer Threshold Value</i>	28.7%	33.4%	34.3%
Center for Rehab at Hoosick Falls	38.6%	43.2%	72.2%

Conclusion

There will be no changes to beds or services due to this application. The facility reported that 85.4% of its licensed beds are staffed and occupied as of February 5, 2025. Rensselaer County had 95.4% of the county's licensed beds staffed and 89.6% occupied for a 94.1% occupancy of staffed beds.

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	The Center for Nursing and Rehabilitation at Hoosick Falls	Same
Address	21 Danforth Street Hoosick Falls, NY 12090	Same
RHCF Capacity	82 beds	Same
ADHCP Capacity	N/A	Same
Type of Operator	Not-for-Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Hoosick Falls Health Center Inc. Co-Operator <u>Sole Corporate Member</u> SVHC-Hoosick Falls LLC Not-For- Profit Coropration <u>Passive Member</u> Southwestern Vermont Health Care Corporation	Hoosick Falls Center LLC <u>Membership:</u> Mordejai Salamon* 65% Ariel Jaffa 12% Penny Morgan 12% Yehudis Klein 5% Blimie Perlstein 5% Stephen Bernier 1% <i>*Managing Member</i>

On 04/1/2024 an Interim Consultative Services Agreement was entered into by Hoosick Consulting, LLC and Hoosick Falls Health Center, Inc. The interim agreement will terminate when this application has been approved and all contingencies have been satisfied. Once Hoosick Falls Center LLC has assumed ownership of the facility there is no intent to enter into any agreement(s) involving the management/administrative/billing or consulting services for the facility.

Character and Competence

Mordejai Salamon lists concurrent employment as Director of Business Development at Gold Crest Care Center in Bronx, NY, and as the Chief Marketing Officer at Tupper Lake Center, LLC, in Tupper Lake, NY. Previously, Mordejai Salamon was the Director of Marketing for Fieldston Lodge Care Center in Bronx, NY. Mordejai Salamon holds a bachelor's degree in business management from Fairleigh Dickenson University and discloses the following healthcare facility ownership interests:

New York Nursing Homes

North Country Nursing and Rehabilitation (17%)	12/2023 to present
Tupper Lake Center for Nursing and Rehabilitation (9.5%)	01/2025 to present

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation (CT) (10%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation (CT) (7%)	11/2021 to present
Southport Center for Nursing and Rehabilitation (CT) (7%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation (CT) (7%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation (CT) (7%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation (CT) (7%)	11/2021 to present

Ariel Jaffa is currently a homemaker and lists previous employment as a teacher at Otsar Family Services in Brooklyn, NY. Ariel Jaffa holds a high school diploma from SKA High School and discloses no healthcare facility ownership interests.

Penny Morgan is currently retired since May 2010. Penny Morgan holds a Juris Doctor from St. Johns School of Law. Penny Morgan is licensed as an attorney in New York and previously held licenses in New Jersey and Florida, which are currently inactive.

Yehudis Klein lists employment as a Risk Manager at P&G Brokerage, Inc. an insurance brokerage firm in Brooklyn, NY. Previously, Yehudis Klein was unemployed from 2015 to 2018 and prior to that worked as a teacher at Bais Yaakov D'Rav Meir a private school located in Brooklyn, NY. Yehudis Klein holds a high school diploma from Bais Rochel High School and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Tupper Lake Center for Nursing and Rehabilitation (5%) 01/2025 to present

End Dated Ownership

Elizabethtown Nursing and Rehabilitation (PA) (20%) 12/2020 to 06/2023
 Emerald Rehab and Healthcare Center (PA) (10%) 04/2022 to 06/2023
 Forest Park Nursing and Rehabilitation (PA) (10%) 03/2022 to 06/2023

Blimie Perlstein lists employment as Owner of P&G Brokerage, Inc. an insurance brokerage firm in Brooklyn, NY. Blimie Perlstein holds a high school diploma from Tomer Dvora High School and discloses the following healthcare facility ownership interests:

New York Nursing Homes

North Country Nursing and Rehabilitation (5%) 12/2023 to present
 Tupper Lake Center for Nursing and Rehabilitation (5%) 01/2025 to present

Stephen Bernier lists concurrent employment as Owner and Operator of Zella Healthcare Consulting LLC a Healthcare consulting company and Zella Staffing Solution LLC a staffing agency in Simsbury, CT. Previously, Stephen Bernier worked as a Senior Manager at Marcum LLP an accounting and advisory services firm in Hartford, CT. Stephen Bernier holds a bachelor's degree in business administration from Charter Oak State College and discloses no healthcare facility ownership interests.

Quality Review

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

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Mordejai Salamon	8	7	85.7%	1	100%
Ariel Jaffa	0	N/A	N/A	N/A	N/A
Penny Morgan	0	N/A	N/A	N/A	N/A
Yehudis Klein	1	1	100%	N/A	N/A
Blimie Perlstein	2	2	100%	N/A	N/A
Stephen Bernier	0	N/A	N/A	N/A	N/A

*Duration of Ownership as of 04/10/2025

Data date: 1/2025

New York. The proposed owner's portfolio includes ownership in two New York facilities. Both facilities have a CMS overall quality rating of below average to much below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings, the applicant indicated the following:

North Country Nursing and Rehabilitation- Blimie Perlstein and Mordejai Salamon have been shareholders (5.0% and 17.0%, respectively) of this facility since December 2023. Since becoming shareholders, these individuals report they have made positive operational improvements at the facility including the hiring of a new facility Administrator in June of 2024. As a result of these efforts, the facility reported that its most recent health inspection survey resulted in no high-level deficiencies, and, as a result, the facility expects that its Overall star rating will increase from one (1) star to two (2) stars within the near term, with the goal of reaching three (3) stars in the Overall rating by the end of 2025.

Tupper Lake Center for Nursing and Rehab- Blimie Perlstein (a 5.0% member of this facility), Mordejai Salamon (a 9.5% member of this facility), and Yehudis Klein (a 5.0% member of this facility) became members of the facility in January of 2025. In an effort to improve the facility's star ratings even further, these members plan to visit the facility on a regular basis to determine which operational improvements are still needed. They plan to work closely with the facility's risk management consultant in regard to making positive operational improvements at the facility. As a result of these initiatives, the facility is hopeful that its Overall star rating will increase to three (3) stars by the end of 2025.

Connecticut. The proposed owner's portfolio includes ownership in six Connecticut facilities. One of the Connecticut facilities in the ownership portfolio, Waterbury Center for Nursing and Rehabilitation, had a CMS overall quality rating of average. The remaining five facilities in the ownership portfolio had a CMS overall quality rating of below average to much below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings, the applicant indicated the following:

Advanced Center for Nursing and Rehabilitation- The applicant states that a CMS health inspection survey that was conducted at Advanced Center for Nursing and Rehabilitation on September 20, 2022, resulted in a survey deficiency that was later disputed by the facility via the Informal Dispute Resolution Process (IDR). During the dispute period, the facility's health inspection score was not reflective of this deficiency. As such, there were several months during 2022, 2023, and 2024 where the facility's Overall star rating was two (2) stars, including the months of April 2024 through August 2024. However, in September of 2024, the IDR was ultimately denied by CMS (a process that took two [2] years), and, as a result, the facility's health inspection score and its Overall star rating are now reflective of this outcome.

The applicant added that CMS adjusted its "Cut Points" in September of 2024, which is another contributing factor leading to the facility receiving one (1) star in the Overall category. They stated the facility is expecting its next survey to be positive, which should serve to increase the facility's Overall rating to two (2) stars during the next survey cycle.

West Haven Center for Nursing and Rehabilitation- The facility shows one (1) star in the Overall category as a result of several deficiencies cited during a survey conducted in November of 2023. There were no G-level tags or Immediate Jeopardy violations associated with this survey. The facility has since completed its Plan of Correction (POC) and has made significant improvements to the physical plant (many of the deficiencies related to minor physical plant issues, such as toilet paper holders being placed at an incorrect height, etc.). In addition, the housekeeping department and the maintenance department regularly visit resident rooms together in order to determine if rooms require upgrading or maintenance.

The applicant added that one (1) of the survey deficiencies resulted from an alleged misappropriation of certain medications. As part of the facility's POC, all of the facility's nursing staff were given an in-service regarding the proper handling of medications and several of the facility's staff were replaced. The facility is confident that its next survey will result in fewer deficiencies and, as a result, the facility is expecting that its Overall star rating will increase to two (2) stars within the near term.

Southport Center for Nursing and Rehabilitation- The applicant states that the facility continues to monitor its operations and has been focused on hiring quality full-time nursing staff. The facility reported that its most recent health inspection survey resulted in no high-level deficiencies, and, as a result, the facility expects that its Overall star rating will increase from one (1) star to two (2) stars within the near term, with the goal of reaching three (3) stars in the Overall rating by the end of 2025.

New Haven Center for Nursing and Rehabilitation- Although the facility's Overall rating has remained at one (1) star for quite some time, the facility is pleased to report that it is no longer a Special Focus Candidate as a result of the positive operational improvements made at the facility, including the hiring of a new facility Administrator. The facility also reported that it received only low-level tags during its most recent survey. As a result, the facility expects that its Overall star rating will increase to two (2) stars during the next CMS star ratings update, with the goal of reaching three (3) stars in the Overall rating by the end of 2025.

Torrington Center for Nursing and Rehabilitation- The applicant states that the facility continues to monitor its operations and has been focused on hiring full-time nursing staff. The facility reported that its most recent health inspection survey resulted in no high-level deficiencies, and, as a result, the facility expects that its Overall star rating will increase from two (2) stars to three (3) stars within the near term.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
The Center for Nursing and Rehabilitation at Hoosick Falls	Subject Facility	**	***	***	*
North Country Nursing and Rehabilitation	Current	*	*	****	****
	12/2023	*	*	‡	***
Tupper Lake Center for Nursing and Rehabilitation	Current	**	*	*****	***
	01/2025	**	*	*****	***
Connecticut					
Advanced Center for Nursing and Rehabilitation	Current	**	**	***	****
	10/2016	*	*	***	*
West Haven Center for Nursing and Rehabilitation	Current	*	*	**	**
	11/2021	**	*	*****	***
Southport Center for Nursing and Rehabilitation	Current	*	*	***	****
	11/2021	*	*	**	***
New Haven Center for Nursing and Rehabilitation	Current	*	*	***	***
	11/2021	*	*	**	***
Waterbury Center for Nursing and Rehabilitation	Current	***	**	***	*****
	11/2021	**	*	***	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Torrington Center for Nursing and Rehabilitation	Current	*	**	*	****
	11/2021	*	*	****	***

Data date: 1/2025

‡ This facility submitted data that could not be verified through an audit.

End Dated Ownership					
Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Pennsylvania					
Elizabethtown Nursing and Rehabilitation	06/2023	**	**	****	**
	12/2020	*	*	**	***
Emerald Rehab and Healthcare Center	06/2023	*	**	***	*
	04/2022	**	**	***	***
Forest Park Nursing and Rehabilitation	06/2023	*	*	***	**
	03/2022	**	**	***	***

Enforcement History

New York

A review of the operations of North Country Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals no enforcements.

A review of the operations of Tupper Lake Center for Nursing and Rehab under 10 NYCRR §600.2 requirements for approval reveals no enforcements.

Connecticut

A review of the operations of Advanced Center for Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a state CMP of \$3,060.00 on 11/26/2018, for violation of Connecticut state agency Public Health Code Section 19-13-D8t(m)(2). An interview with the ADON on 10/30/2018 identified although the facility had no policy regarding the classification of incidents, the facility would follow the Public Health Code.
- The facility was assessed a federal CMP of \$40,724.00 on 04/07/2022 under F-tag 684 for failure to provide appropriate treatment and care according to orders, resident's preferences and goals and F-tag 689 as immediate jeopardy for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. The facility was also assessed a state CMP of \$10,000.00.
- The facility was assessed a federal CMP of \$53,275.00 on 06/14/2023 under F-tag 689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of West Haven Center for Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$6,630.00 on 09/20/2022 under F-tag 678 as immediate jeopardy for failure to provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and the resident's advance directives and F-tag 658

as immediate jeopardy for failure to ensure services provided by the nursing facility meet professional standards of quality.

A review of the operations of Southport Center for Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$8,648.00 on 06/24/2022 under F-tag 689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. The facility was also assessed a state CMP of \$6,120.00.

A review of the operations of New Haven Center for Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a state CMP of \$1,560.00 on 10/24/2023, for violation of Connecticut state agency Public Health Code Section 19-13-D8t(m)(2) and/or Connecticut General Statutes 19a-550. A survey conducted on 09/27/23 revealed the facility was under the required staffing hours by 46.4 hours on 9/13/2023, under the required staffing hours by 48.8 hours on 9/18/2023, and under the required staffing hours by 51.6 hours on 09/22/2023.
- The facility was assessed a federal CMP of \$199,306.00 on 08/03/22 under F-tag 658 as immediate jeopardy for failure to ensure services provided by the nursing facility meet professional standards of quality and F-tag 725 as immediate jeopardy for failure to provide enough nursing staff every day to meet the needs of every resident and have a licensed nurse in charge on each shift. Specifically, the facility failed to administer medications as prescribed (to 21 residents), failed to notify the DNS and physician when medications were not administered, failed to complete assessments of the residents' condition after medications were omitted, failed to monitor residents who had significant medication omissions and failed to accurately document the medication omissions. Further, the facility failed to ensure licensed staff followed professional standards of practice including reporting to the oncoming and off-going shifts, narcotic count, and ensuring the security of the narcotic keys.
- The facility was assessed a federal CMP of \$51,077.00 on 04/27/22 under F-tag 684 as immediate jeopardy for failure to provide appropriate treatment and care according to orders, resident's preferences and goals and F-tag 686 for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing. The facility was also assessed a state CMP of \$10,000.00.

A review of the operations of Waterbury Center for Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a CMP of \$9,750.00 on 06/23/2022 for an infection control deficiency per the applicant.

A review of the operations of Torrington Center for Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$650.00 on 01/03/2022 for failure to report COVID-19 data.

Pennsylvania

A review of the operations of Elizabethtown Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$88,615.00 for a survey conducted on 03/31/2023. The facility was cited during that survey for failure to allow residents to self-administer drugs if determined clinically appropriate, failure to provide pharmaceutical services to meet the needs of each resident and employ or obtain the services of a licensed pharmacist, and failure to ensure drugs and biologicals used in the facility are labeled in accordance with currently accepted professional principles; and all drugs and biologicals must be stored in locked compartments, separately locked, compartments for controlled drugs.
- The facility was assessed a state fine of \$8,500.00 on 05/8/2023 for immediate jeopardy under F-tag 725 for failure to provide enough nursing staff every day to meet the needs of every resident; and have a licensed nurse in charge on each shift.

A review of the operations of Emerald Rehab and Healthcare Center under 10 NYCRR §600.2 requirements for approval reveals no enforcements.

A review of the operations of Forest Park Nursing and Rehabilitation under 10 NYCRR §600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$658.00 on 04/04/2022 and \$994.00 on 04/18/2022 for failure to report COVID-19 data.
- The facility was assessed a federal CMP of \$33,735.00 under F tag 689 as immediate jeopardy on 12/22/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. The facility was also assessed a state fine of \$11,500.00.
- The facility was assessed a federal CMP on 06/23/2023 of \$8,190.00 under F tag 689 at a G level for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. The facility was also assessed a state CMP of \$8,750.00.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2023) results with the first and third-year operating budgets after the change in ownership, in 2025 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$216.35	\$3,099,884	\$217.67	\$4,428,662	\$217.67	\$4,472,948
Medicaid MC	\$216.35	98,656	\$206.63	133,898	\$206.78	135,237
Medicare FFS	\$575.47	1,145,179	\$649.97	2,483,520	\$650.00	2,508,355
Medicare MC	\$575.47	267,592	\$650.30	429,195	\$649.91	433,487
Private Pay	\$399.43	891,532	\$399.49	1,265,975	\$399.45	1,278,635
All Other-Assessment		0		256,307		258,871
Other Revenue*		<u>80,447</u>		<u>80,447</u>		<u>80,447</u>
Total		\$5,583,290		\$9,078,004		\$9,167,980
Expenses						
Operating	\$406.50	\$7,914,991	\$268.87	\$7,701,578	\$267.69	\$7,744,145
Capital	<u>\$20.68</u>	<u>402,735</u>	<u>\$45.01</u>	<u>1,289,258</u>	<u>\$46.46</u>	<u>1,344,068</u>
Total Expenses	\$427.18	\$8,317,726	\$313.88	\$8,990,836	\$314.15	\$9,088,213
Net Income (Loss)		<u>(\$2,734,436)</u>		<u>\$87,168</u>		<u>\$79,767</u>
Patient Days		19,471		28,644		28,930
Utilization %		65.06%		95.70%		96.66%

*Other revenue: \$27,805 from contributions, \$7,200 in rental income, and \$45,442 in miscellaneous income.

The following is noted concerning the submitted RHCF operating budget:

- The current year reflects the facility's 2023 revenues and expenses.
- The Medicaid FFS rate is based on the facility's 2024 Medicaid Regional Pricing rate. The Medicaid MC rate is based on an estimated 95% of the Medicaid FFS rate. The Medicare and Private Pay rates are based on forecasted payer rates.
- Current year staffing is based on 2023 staffing levels. Staffing for the first and third years is based on the 10 NYCRR §415.13 minimum staffing ratio guidelines.
- Expenses were based on the 2023 operating expenses, increased by 2% for most non-payroll items, and a reduction in purchased services of \$368,885 and \$167,682 in other direct expenses based on forecasted efficiencies and consolidation of duties.
 - The projected percentage of direct care staffing costs to projected facility revenues is 40.59% in Year One and 42.39% in Year Three, exceeding the 40% requirement in Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 80.74% in Year One and 80.35% in Year Three, exceeding the 70% requirement in Public Health Law §2808.
 - The facility's projected profit percentage is 0.96% in Year One and 0.87% in Year Three, less than the 5% maximum outlined in Public Health Law §2808.
- The facility's projected utilization is 95.70% in Year One and 96.66% in Year Three. Utilization was 72.2% in 2021, 59.42% in 2022 and 65.06% in 2023. Based on self-reporting, occupancy was 85.4% as of September 18, 2024. The applicant plans to improve occupancy by various measures, including:
 - Admit and treat residents with higher acuity than previously treated at the facility.
 - Implement a new marketing program to promote the skills of the new ownership.
 - Continue to focus on communication and relationship building with area doctors, hospitals, and residents' family members regarding improvements made at the facility.
 - Invest further by updating and beautifying resident rooms and the dining room.

- Partner with local hospitals and physician groups to coordinate the continuation of patient care.

Utilization by the payor source is summarized below:

Payor	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Days</u>	<u>%</u>	<u>Pt Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	14,328	73.59%	20,346	71.03%	20,549	71.03%
Medicaid MC	456	2.34%	648	2.26%	654	2.26%
Medicare FFS	1,990	10.22%	3,821	13.34%	3,859	13.34%
Medicare MC	465	2.39%	660	2.30%	667	2.31%
Private Pay	<u>2,232</u>	<u>11.46%</u>	<u>3,169</u>	<u>11.07%</u>	<u>3,201</u>	<u>11.06%</u>
Total	19,471	100%	28,644	100%	28,930	100%

- Breakeven utilization is projected at 95.63% in Year One.
- The facility's Medicaid admissions were 38.6% in 2021, 43.2% in 2022, and 72.2% in 2023, all above Rensselaer County's 75% threshold rates of 28.7% for 2021, 33.4% for 2022 and 34.3% in 2023.

Operations Transfer Agreement

The applicant has submitted an executed OTA to acquire the RHCF's operating assets; terms are summarized below:

Date:	March 13, 2024
Seller:	Hoosick Falls Health Center, Inc.
Buyer:	Hoosick Falls Center, LLC
Asset Acquired:	Rights, title, and interest in all of the Facility's operating assets free and clear of all liens (except those assets transferred in the Real Property Agreement): operating certificates, physical plant, assumed contracts, inventory, operating books and manuals, business records, telephone numbers, e-mail addresses, intellectual property rights, goodwill, warranties, and tangible personal property.
Excluded Assets:	All cash or cash equivalents, proprietary marketing materials, the right to payment before the Effective Date, minute books, claims to payments, and accounts receivable before the Effective Date are excluded.
Excluded Liabilities:	It shall not assume any lawsuits, payor claims, seller indebtedness, obligations of the Seller or obligations to employees before closing, and contract obligations or taxes assessed before effective time.
Purchase Price:	\$250,000 plus certain assumed liabilities to be determined at closing.
Payment of Purchase Price:	\$250,000 Paid at closing

The purchase price for the operations of \$250, 000 is to be satisfied by members' equity.

BFA Attachment A-1 is Hoosick Falls Center, LLC's net worth summary, revealing sufficient resources for equity requirements.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 7, 2024, the facility had no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to sell the RHCF's real property; terms are summarized below:

Date:	March 13, 2024
Seller:	Hoosick Falls Health Center, Inc.
Buyer:	Hoosick PropCo, LLC
Asset Purchased:	RHCF's Property is located at 21 Danforth Street, Hoosick Falls
Purchase Price:	\$2,250,000
Payment of Purchase Price	\$2,250,000 at closing

The purchase price for the real property is to be satisfied as follows:

Equity – members	\$450,000
Loan – \$1,800,000, self-amortizing 10-year loan at 10 Year UST +2.5% or approximately 6.35%	<u>1,800,000</u>
Total	\$2,250,000

BFA Attachment A-2 is Hoosick Propco, LLC's net worth summary, revealing sufficient resources for equity requirements. Mordejai Salamon has provided an affidavit stating he will contribute resources disproportionate to his ownership interest. A letter of interest from Eastern Union Healthcare Group has been provided for the loan.

Consulting Services Agreement

Hoosick Consulting, LLC entered into a Consulting Services Agreement with the present operator, Hoosick Falls Health Center Inc. The applicant has submitted an executed agreement, which is summarized below:

Dated:	March 11, 2024
Facility:	Hoosick Falls Health Center, Inc.
Contractor:	Hoosick Consulting, LLC
Term:	Effective April 1, 2024. It will terminate when the Facility is sold or closed.
Compensation:	No payment to consultant—responsible non-operator costs. If Hoosick Falls Center has not received approval for the CON by July 15, 2024, the consultant will be required to loan money to the Operator to cover the working capital needed to offset the Operator's operating deficits.
Contractor's Duties:	Assist operator: to retain Administrator, evaluate performance, IT training, policy compliance, capital needs, engage additional consultants, budget, accounts payable, negotiating rates, retain Director of Nursing, in-service education to clinical staff, and compliance with regulatory agencies.

The Consultant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated. The applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable. Menajem Salamon is Hoosick Consulting, LLC's chief executive officer and the brother of a member of the proposed operator.

Lease Agreement

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

Date:	April 9, 2024
Premises:	82-bed SNF located at 21 Danforth Street, Hoosick Falls, New York 12090
Landlord:	Hoosick Falls Propco, LLC
Lessee:	Hoosick Falls Center, LLC
Term:	Five (5) Years and one renewal option of five (5) years
Rental:	\$900,000 First Year (3% yearly increases). In the fourth year, the greater of the schedule rent or market value.
Provisions:	Triple Net

The lease arrangement is a non-arms-length agreement. Mordejai Salamon, Blimie Perlstein, Yehudis Klein, and Stephen Bernier are members of Hoosick Falls Center LLC and Hoosick Propco LLC. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity and two letters from NYS-licensed realtors attesting to the reasonableness of the rental rate.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF operations is \$250,000, plus assumed liabilities, estimated to be under \$25,000, funded with proposed members' equity. The real property purchase of \$2,250,000 will be funded with \$450,000 in proposed members' equity and a self-amortizing 10-year \$1,800,000 loan at a 10-year UST +2.50% interest rate (approximately 6.35%). Eastern Union Healthcare Group has provided a letter of interest.

The working capital requirement is estimated at \$1,498,473 based on two months of first-year expenses. Proposed members will fund \$1,498,473 in working capital from their liquid resources. BFA Attachment A-1 is Hoosick Falls Center, LLC members' net worth summary, revealing sufficient resources to meet the operating and working capital equity requirements.

The submitted budget projects first-year and third-year profits of \$87,168 and \$79,767. Total revenues are expected to increase by \$3,494,714 in Year One. Overall expenses are expected to increase by \$673,110 based on a \$213,413 reduction in operating expenses and a \$886,523 increase in capital expense (rent). The decline in operating expenses is attributable to a decrease of \$368,885 in purchased services and \$167,682 in other direct expenses. BFA Attachment B is Hoosick Falls Center's pro forma balance sheet, showing the operating entity will start with \$1,748,473 in member's equity as of the first day of operations. The budget appears reasonable.

BFA Attachment C is the Financial Summary of Hoosick Falls Health Center, Inc. d/b/a The Center for Nursing and Rehabilitation at Hoosick Falls for 2021 through 2023. The RHCF had an average negative working capital, average negative net assets, and average negative operating income of \$2,388,831 during the reporting periods.

BFA Attachment D lists the Hoosick Falls Center, LLC members' New York-affiliated RHCFs and their financial summary. Based on the 2023 certified financial statements, the facility had positive working capital, positive net assets, and a net income of \$1,021,081.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A-1	Hoosick Falls Center, LLC - Members' Net Worth
BFA Attachment A-2	Hoosick Falls Propco, LLC – Members' Net Worth
BFA Attachment B	Pro Forma Balance Sheets for the Operator
BFA Attachment C	Hoosick Falls Health Center, Inc. d/b/a The Center for Nursing and Rehabilitation at Hoosick Falls – Financial Summary of 2021 through 2023 and Hoosick Falls Health Center, Inc. 2022 Financial Statement
BFA Attachment D	Proposed Members' Ownership Interest in Affiliated RHCFs and Financial Summary
BFA Attachment E	Organization chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 18th day of June 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Hoosick Falls Center LLC as the new operator of The Center for Nursing and Rehabilitation at Hoosick Falls, an existing 82-bed residential health care facility located at 21 Danforth Street, Hoosick Falls, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

202251 E

FACILITY/APPLICANT:

Hoosick Falls Center LLC d/b/a Hoosick Falls
Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment to purchase the real property, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.



Project # 231213-E
Silvercrest Acquisition I d/b/a
Silvercrest Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: May 26, 2023

Executive Summary

Description

Silvercrest Acquisition I d/b/a Silvercrest Nursing and Rehabilitation Center, a New York limited liability company, is requesting to be established as the operator of Silvercrest, an existing 320-bed voluntary not-for-profit residential health care facility (RHCF), which includes an 80-bed ventilator-dependent unit, at 144-45 87th Avenue, Jamaica, NY (Queens County).

New York-Presbyterian Healthcare System, Inc. (NYPHS), a tax-exempt organization, is Silvercrest's current passive parent. NYPHS selects Silvercrest's members who in turn select Silvercrest's Board of Trustees. The relationship between NYPHS and the subject facility will terminate upon completion of the proposed transaction.

On December 12, 2022, Silvercrest (as Seller) and Silvercrest Acquisition I, LLC (as the Buyer) entered into an Asset Purchase Agreement (APA) for the sale and acquisition of the operating interest in Silvercrest for \$3,000,000. Silvercrest will also transfer its membership interest in Silvercrest Senior Housing Development Fund Corporation (SHDF), a New York not-for-profit corporation and owner and operator of an 80-bedroom adult independent living facility at 86-19 144th Street in Jamaica NY (Queens County) to a not-for-profit corporation that will replace the Silvercrest as the sponsor of SHDF.

Concurrently, on December 12, 2022, Silvercrest (as Seller) and Silvercrest Acquisition II, LLC (as Purchaser) entered into a Real

Property Agreement (RPA) for the sale of the real property for \$93,000,000. Silvercrest Acquisition I, LLC will lease the RHCF premises from Silvercrest Acquisition II, LLC.

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

Current Operator

Silvercrest
(Not-for-Profit Corporation)

Passive member:

New York-Presbyterian Healthcare System, Inc.

Proposed Operator

Silvercrest Acquisition I, LLC d/b/a Silvercrest
Nursing and Rehabilitation Center

Members:

Pasquale DeBenedictis*	40.0%
Alex Solovey*	40.0%
Joseph F. Carillo II*	10.0%
Michael Schrieber*	10.0%
Total	100.0%

**Managing member of the facility*

There are common members of the operating entity, Silvercrest Acquisition I, LLC, and the real property entity, Silvercrest Acquisition I, LLC. All members of the operating LLC are members of the real property LLC.

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. As of April 15, 2025, the facility reported 100.0% occupancy of staffed beds, and Queens County had 95.6% occupancy of staffed beds.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The combined purchase price for the RHCF's operations and realty is \$96,000,000. The purchase price of operations of \$3,000,000 will be met with the proposed

members' equity. The purchase price for the real estate of \$93,000,000 will be met with equity of \$11,400,000 from the proposed realty members' equity and a non-amortized bridge loan of \$81,600,000 with a three-year term and an estimated interest rate of 7.96% to 8.26%. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$62,971,400	\$63,506,200
Expenses	<u>61,439,500</u>	<u>61,736,867</u>
Net Income	\$1,531,900	\$1,769,333

Health Equity Impact Assessment

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

Recommendations

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

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

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a final financing package acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a photocopy of the executed Consulting Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
June 18, 2025

Need Analysis

Background and Analysis

The primary service area is Queens County, which has a population projected to increase to 2,565,268 by 2030 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

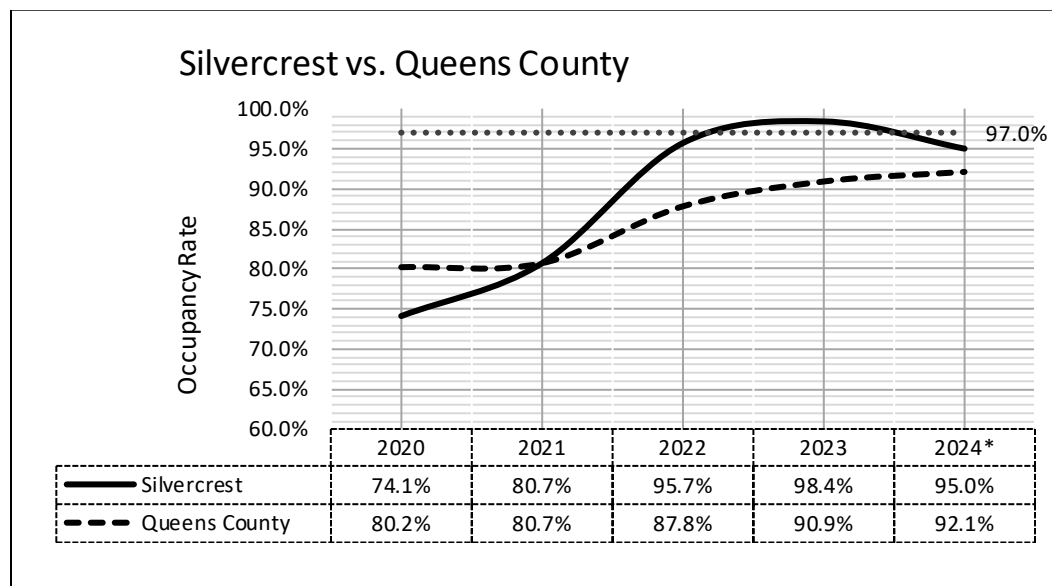
Demographics	Queens County	New York State
Total Population-(2023 Estimate)	2,330,124	19,872,319
Hispanic or Latino (of any race)	27.9%	19.6%
White (non-Hispanic)	23.6%	53.4%
Black or African American (non-Hispanic)	16.5%	13.6%
Asian(non-Hispanic)	25.9%	8.8%
Other (non-Hispanic)	6.1%	4.6%

Source: 2023 American Community Survey (5-year Estimates Data Profiles.)

The table below provides population estimates of individuals 65 years old and above in Queens County and New York State.

	Queens County Age Group 65-84	Queens County Age Group 85+	New York State Age Group 65-84	New York State Age Group 85+
Estimated 2023 Population	349,102	50,678	3,019,337	441,849
Population Projection by 2030	447,990	69,109	3,723,556	618,653
Percent Change	+28.3%	+36.3%	+23.3%	+40.0%

Source: 2023 American Community Survey (5-Year Estimates) and Cornell Program on Applied Demographics.



*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHCF cost reports.

Based on weekly census data, the facility reported that 96.6% of their 320 licensed beds were staffed and 96.6% occupied on April 15, 2025, for a 100.0% occupancy of staffed beds. Queens County had 97.2% of the county's 12,320 licensed beds staffed and 92.9% occupied for a 95.6% occupancy of staffed beds.

The table below shows the CMS Rating and the utilization of the closest RHCs to Silvercrest.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCs	Occupancy			
	As of 5/2025			2021	2022	2023	2024*
Silvercrest	2	320	0 miles/0 mins	80.7%	95.7%	98.4%	95.0%
Jamaica Hospital Nursing CO Inc	5	228	0.8 miles/8 mins	84.3%	91.5%	94.5%	97.2%
Margaret Tietz Nursing	5	200	1.0 miles/5 mins	95.1%	95.3%	94.7%	96.4%
Chapin Home	5	220	1.1 miles/6 mins	57.0%	61.2%	63.9%	67.3%
Meadow Park Rehab	4	143	1.7 miles/10 mins	82.4%	87.9%	90.5%	92.6%
Highland Care Center	3	320	1.8 miles/9 mins	93.3%	95.0%	96.9%	97.9%
Forest Hills Care Center	3	100	2.8 miles/15 mins	85.1%	88.4%	87.5%	88.9%

Source: CMS and RHC cost report.

*2024 data is self-reported and not verified. Occupancy through 2023 is from the RHC cost reports.

The following table provides the Case Mix Index (CMI) for the facility and surrounding RHCs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Silvercrest	1.2609	1.211	1.3218	1.3063	1.3116	1.2797
Jamaica Hospital Nursing	1.314	1.079	1.3039	1.1038	1.3444	1.1084
Margaret Tietz Nursing	1.364	1.299	1.395	1.3451	1.445	1.3353
Chapin Home	1.091	1.023	1.1131	1.0422	1.0915	1.0676
Meadow Park Rehab	1.412	1.371	1.4674	1.398	1.5438	1.4415
Highland Care Center	1.417	1.375	1.5217	1.5206	1.4589	1.4771
Forest Hills Care Center	1.363	1.422	1.4699	1.4151	1.4629	1.4968

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was below the threshold of 75% of the Queens County rate for the year 2022.

Medicaid Access	2021	2022	2023
Queens County Total	42.1%	44.0%	42.4%
<i>Queens County Threshold Value</i>	31.5%	33.0%	31.8%
Silvercrest	54.0%	22.7%	60.1%

Conclusion

There will be no changes to beds or services due to this application. As of April 15, 2025, the facility reported 100.0% occupancy of staffed beds and Queens County reported 95.6% occupancy of staffed beds.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Silvercrest	Silvercrest Nursing and Rehabilitation Center
Address	144-45 87 th Avenue Jamaica, New York 11435	Same
RHCF Capacity	RHCF beds 240 Ventilator beds 80 Total beds 320	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Not-for-Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Silvercrest <u>Passive member:</u> New York-Presbyterian Healthcare System, Inc.	Silvercrest Acquisition I, LLC <u>Membership:</u> Pasquale DeBenedictis* 40% Alex Solovey* 40% Joseph Carillo, II* 10% Michael Schrieber* 10% *Managing Members

Upon approval of this application, an administrative/consulting services agreement (CASA) will commence between Silvercrest Acquisition I, LLC, and Cassena Care, LLC. There is common ownership between the CASA provider and the proposed operator, where some (not all) of the members, either directly or indirectly, have a membership interest in both the CASA provider and the proposed operator. Per the applicant, Cassena Care, LLC is a privately held Limited Liability Company managed by Pasquale DeBenedictis, Alex Solovey, and Joseph F. Carillo, II, who hold their membership interests through their respective holding companies. The services to be provided by the CASA include back-office and non-clinical services, including but not limited to, billing, collections, accounting, and consulting services.

Currently, there is an affiliation between Silvercrest and New York-Presbyterian. New York-Presbyterian Healthcare System, Inc. (NYPHS) is a New York not-for-profit corporation that serves as the coordinating body of an integrated network of separately incorporated but affiliated healthcare providers. NYPHS elects the members of Silvercrest, and these members elect the Silvercrest Board of Trustees. From a federal tax perspective, NYPHS is a supporting organization of several not-for-profit, tax-exempt corporations that make up the New York-Presbyterian Healthcare System, including Silvercrest and New York-Presbyterian Hospital (Hospital). The members and trustees of NYPHS and the Hospital are the same. Thus, New York-Presbyterian Healthcare System, Inc. is currently the passive parent of Silvercrest. Upon approval and completion of this transaction, NYPHS will no longer be the passive parent, and a Certificate of Dissolution for Silvercrest will be submitted for approval upon receipt from NYPHS and as authorized by its Board of Directors.

Character and Competence

Pasquale DeBenedictis lists concurrent employment as Managing Member of Cassena Care LLC, Woodbury, New York (delivers rehabilitation and nursing services) and as Chief Financial Officer at Upper East Side Rehabilitation and Nursing Center, New York, New York. Previously, Pasquale was Chief Financial Officer at Center for Nursing and Rehabilitation, Brooklyn, New York, Controller at Hillside Certified Home Health Agency, Jamaica Estates, New York, and Chief Financial Officer at Theradynamics Rehab Management, Woodbury, New York. Pasquale holds a bachelor's degree in accounting from SUNY Plattsburg and was previously a New York State licensed certified public accountant. Pasquale DeBenedictis discloses the following healthcare facility ownership interests:

New York Nursing Homes

East Neck Nursing and Rehabilitation Center (15%)	02/2005 to present
Workmen's Circle Multicare Center (25%)	07/2013 to present
Shore View Nursing and Rehabilitation Center (32.5%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (35%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.5%)	06/2015 to present
Sea Crest Nursing and Rehabilitation Center (32.5%)	07/2015 to present
Fordham Nursing and Rehabilitation Center (28.25%)	08/2016 to present
Long Beach Nursing and Rehabilitation Center (22.75%)	08/2016 to present
Downtown Brooklyn Nursing and Rehabilitation Center (28.84%)	06/2018 to present
Margaret Tietz Nursing and Rehabilitation Center (30.33%)	02/2019 to present
West Village Rehabilitation and Nursing Center (35%)	08/2023 to present
Saints Joachim & Anne Nursing and Rehabilitation Center (37.5%)	Pending

Out-of-State Nursing Homes

Cassena Care at Norwalk [CT] (34%)	06/2013 to present
Cassena Care at Stamford [CT] (34%)	11/2015 to present

End-Dated Ownership

Barnwell Nursing and Rehabilitation Center [NY] (33.33%)	11/2003 to 12/2017
Mills Pond Nursing and Rehabilitation Center [NY] (29%)	10/2010 to 04/2018
Sayville Nursing and Rehabilitation Center [NY] (33.34%)	12/2012 to 04/2018
Cassena Care at New Britain [CT] (32.58%)	11/2015 to 12/2020

Assisted Living/Adult Home Facilities

Morningside at Home Assisted Living Program (35%)	06/2018 to present
Bay Vista Assisted Living (25%)	08/2022 to present

Diagnostic and Treatment Centers

Cassena Kidney Care at Workmen's Circle (25%)	08/2015 to present
Cassena Kidney Care at East Neck (33.33%)	09/2015 to present
Cassena Kidney Care at Peninsula (23.75%)	11/2016 to present
Cassena Care Dialysis at Morningside (35%)	07/2019 to present
Cassena Kidney Care at Sea Crest (32.5%)	09/2017 to present
Cassena Kidney Care at Norwalk [CT] (30%)	03/2023 to present
Beach Channel D&TC	Pending**
Pelham Parkway SC LLC	Pending**

**Under construction

Certified Home Health Agency

Cassena Care at Home (30%)	12/2020 to present
Hillside Certified Home Care Agency (30%)	10/2017 to present

Licensed Home Care Services Agency

Morningside at Home (35%)	06/2018 to present
Long Beach Home Care (25%)	05/2021 to present

Alex Solovey lists concurrent employment as Managing Member of Cassena Care LLC (delivers rehabilitation and nursing services), Woodbury, New York, as Director of Operations at Saints Joachim & Anne Nursing & Rehabilitation Center, Brooklyn, New York, as Chief Executive Officer at Upper East Side Rehabilitation and Nursing Center, New York, New York and as Director of Rehabilitation at Theradynamics Rehab Management, Woodbury, New York. Previously, Alex was employed as the Chief Executive Officer at Center for Nursing and Rehabilitation, Brooklyn, NY, and as Director of Operations at Hillside Certified Home Health Agency, Jamaica Estates, NY. Alex holds a bachelor's degree in physical therapy from New York University and is a New York State licensed physical therapist. Alex Solovey discloses the following healthcare facility ownership interests:

New York Nursing Homes

East Neck Nursing and Rehabilitation Center (15%)	02/2005 to present
Workmen's Circle Multicare Center (25%)	07/2013 to present
Shore View Nursing and Rehabilitation Center (32.5%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (35%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.5%)	06/2015 to present
Sea Crest Nursing and Rehabilitation Center (32.5%)	07/2015 to present
Fordham Nursing and Rehabilitation Center (28.25%)	08/2016 to present
Long Beach Nursing and Rehabilitation Center (22.75%)	08/2016 to present
Downtown Brooklyn Nursing and Rehabilitation Center (28.83%)	06/2018 to present
Margaret Tietz Nursing and Rehabilitation Center (30.34%)	02/2019 to present
West Village Rehabilitation and Nursing Center (35%)	08/2023 to present
Saints Joachim & Anne Nursing and Rehabilitation Center (37.5%)	Pending

Out-of-State Nursing Homes

Cassena Care at Norwalk [CT] (34%)	06/2013 to present
Cassena Care at Stamford [CT] (34%)	11/2015 to present

End-Dated Ownership

Barnwell Nursing and Rehabilitation Center [NY] (33.33%)	11/2003 to 12/2017
Mills Pond Nursing and Rehabilitation Center [NY] (29%)	10/2010 to 04/2018
Sayville Nursing and Rehabilitation Center [NY] (33.33%)	12/2012 to 04/2018
Cassena Care at New Britain [CT] (32.58%)	11/2015 to 12/2020

Assisted Living/Adult Homes

Morningside at Home Assisted Living Program (35%)	06/2018 to present
Bay Vista Assisted Living (25%)	08/2022 to present

Diagnostic and Treatment Centers

Cassena Kidney Care at Workmen's Circle (25%)	08/2015 to present
Cassena Kidney Care at East Neck (33.33%)	09/2015 to present
Cassena Kidney Care at Peninsula (23.75%)	11/2016 to present
Cassena Care Dialysis at Morningside (35%)	07/2019 to present
Cassena Kidney Care at Sea Crest (32.5%)	09/2017 to present
Cassena Kidney Care at Norwalk [CT] (30%)	03/2023 to present
Beach Channel D&TC	Pending***
Pelham Parkway SC LLC	Pending***
***Under construction	

Certified Home Health Agency

Hillside Certified Home Care Agency (30%)	10/2017 to present
Cassena Care at Home (30%)	12/2020 to present

Licensed Home Care Services Agency

Morningside at Home (35%)	06/2018 to present
Long Beach Home Care (25%)	05/2021 to present

Joseph F. Carillo, II lists employment as Managing Member/Administrator/Chief Executive Officer of Carillon Nursing & Rehab Center, Huntington, New York. Joseph holds a master's degree in business administration from Adelphi University and is a New York State licensed nursing home administrator. Joseph F. Carillo II discloses the following healthcare facility ownership interests:

New York Nursing Homes

Carillon Nursing and Rehabilitation Center (11.12%)	11/1994 to present
East Neck Nursing and Rehabilitation Center (26.68%)	02/2005 to present
Workmen's Circle Multicare Center (25%)	07/2013 to present
Morningside Nursing and Rehabilitation Center (10%)	07/2014 to present

Upper East Side Rehabilitation and Nursing Center (10.50%)	03/2016 to present
Downtown Brooklyn Nursing and Rehabilitation Center (10%)	06/2018 to present
West Village Rehabilitation and Nursing Center (5%)	08/2023 to present

End-Dated Ownership

Barnwell Nursing and Rehabilitation Center [NY] (33.33%)	11/2003 to 12/2017
Mills Pond Nursing and Rehabilitation Center [NY] (29%)	10/2010 to 04/2018
Sayville Nursing and Rehabilitation Center [NY] (33.33%)	12/2012 to 04/2018

Assisted Living/Adult Home

Morningside at Home Assisted Living Program (10%)	06/2018 to present
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Diagnostic and Treatment Centers

Carillon Dialysis, LLC (11.11%)	10/2003 to present
Cassena Kidney Care at Workmen's Circle (25%)	08/2015 to present
Cassena Kidney Care at East Neck (33.33%)	09/2015 to present
Cassena Care Dialysis at Morningside (10%)	07/2019 to present

Certified Home Health Agency

Hillside Certified Home Care Agency (5%)	10/2017 to present
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Licensed Home Care Services Agency

Morningside at Home (10%)	06/2018 to present
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Michael A. Schrieber lists concurrent employment as Vice President of Strategic Planning and Corporate Compliance for Cassena Care (delivers rehabilitation and nursing services), Woodbury, New York, as well as, Administrator of Record (AOR) and/or Regional Administrator for Cassena Care. Prior to working for Cassena Care, Michael was concurrently employed as Executive Director of Sea Crest Health Care Center, Brooklyn, NY, and Assistant Executive Director of Shoreview Nursing Home, Brooklyn, NY. In addition, Michael founded and was President of MAS Consulting Associates (health care consultancy), New York, New York. Michael holds master's degrees in public administration and public health from New York University Wagner Graduate School of Public Service and is a New York State licensed nursing home administrator. Michael A. Schrieber discloses the following healthcare facility ownership interests:

New York Nursing Homes

Shore View Nursing and Rehabilitation Center (30%)	06/2014 to present
Upper East Side Rehabilitation and Nursing Center (1.5%)	03/2016 to present
Sea Crest Nursing and Rehabilitation Center (30%)	07/2015 to present
Fordham Nursing and Rehabilitation Center (5%)	08/2016 to present
West Village Rehabilitation and Nursing Center (5%)	08/2023 to present
Saints Joachim & Anne Nursing and Rehabilitation Center (10%)	Pending

Diagnostic and Treatment Centers

Cassena Kidney Care at Sea Crest (30%)	09/2017 to present
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Quality Review

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

CMS Star Rating Criteria					
	Duration of Ownership*				
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Pasquale DeBenedictis	14	1	0%	13	23.08%
Alex Solovey	14	1	0%	13	23.08%
Joseph Carillo, II	7	1	0%	6	16.67%
Michael Schrieber	5	1	0%	4	0%

*Duration of Ownership as of 06/18/2025

Data date: 05/2025

New York. The proposed owner's portfolio includes ownership in thirteen New York facilities. Twelve of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility, Morningside Nursing and Rehabilitation Center, has a CMS overall quality rating of two stars (below average). To improve the quality at the aforementioned facility, the applicant stated the following:

***MORNINGSIDE NURSING AND REHABILITATION CENTER:** Morningside's health inspection has a 3-star rating and a 4-star rating for quality measures. The 2-star rating is due to the facility's staffing levels. The facility is actively working to increase its staffing by recruiting, marketing, and using outside recruiters. Our staffing has improved. The average increase of 800 hours a week in the last 2 months.*

Connecticut. The proposed owner's portfolio includes ownership in two Connecticut facilities. Cassena Care at Stamford has a CMS overall quality rating of two stars (below average rating), and Cassena Care at Norwalk has a CMS overall quality rating of one star (much below average). To improve the quality of the aforementioned facilities, the applicant stated the following:

Cassena Care at Stamford is currently a CMS rated 2-Star facility, with both 4-Star Quality Measures and 4-Star Staffing scores. The Facility is putting a heavy focus on its process of short stay residents who newly receive antipsychotics medications following a hospitalization by doing a thorough review of the medical need and appropriateness of the prescription. Routine audits have been put in place and validation of the prescription is checked with the Medical Director to ensure accuracy. The Facility had a spike in Long Stay residents with Falls with Major Injury in Q4-2023 and has implemented greater risk awareness and monitoring. They have seen success in this program and Q1-2024 showed a good decrease in falls, and that trend is still following, where they expect to show a significant decrease and thus improvement in this marker. The last marker they are putting a heavy focus on for 5-Star are the claims based measures, specific to rehospitalization. Administration at Cassena Care of Stamford are constantly re-educating the staff on the necessary components of e-interact to ensure earlier notifications of patient monitoring. The facility has raised the acuity level of the patients it admits and has improved the quality of care in numerous areas, namely accidents & incidents, and wound care. It is our expectation that when working with the predictive analytic tools that the Cassena Care at Stamford will obtain 5-Star status in its QMs, and thus become an overall 3-Star facility in July of 2024.

In October, 2023, Cassena Care at Norwalk ("Norwalk") was put into immediate jeopardy, as a result of a complaint survey. Such complaint survey and corresponding deficiency resulted in a 1-star rating. Notwithstanding, Norwalk has a 4-star rating in Quality Measures. Norwalk has implemented numerous quality assurance measures, programs and audits that are conducted on a daily, weekly, or monthly basis with the goal of improving the overall care provided and achieving better outcomes. Such measures are resulting in improvements, and we are hopeful that the facility's Quality Measures rating increases to a 5-star. Norwalk's staffing component is 3-Star, which is above average. Unfortunately, due to the weighting of the immediate jeopardy, even with such quality assurance

measures in place, the best the facility can achieve at this time is a 2-star rating. We expect the star rating to improve as the weighting of the immediate jeopardy decreases over the next few years.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Silvercrest	Subject Facility	**	**	****	****
East Neck Nursing and Rehabilitation Center	Current	***	**	*****	**
	02/2005 (CMS ratings started 1/2009)	**	***	****	*
Workmen's Circle Multicare Center	Current	****	****	****	***
	07/2013	*****	*****	*****	**
Shore View Nursing and Rehabilitation Center	Current	*****	*****	*****	****
	06/2014	*****	*****	*****	*
Morningside Nursing and Rehabilitation Center	Current	**	**	****	**
	07/2014	*****	****	*****	***
Peninsula Nursing and Rehabilitation Center	Current	*****	****	*****	**
	08/2014	*	*	****	*
Upper East Side Rehabilitation and Nursing Center	Current	*****	****	*****	***
	06/2015	*****	****	*****	**
Sea Crest Nursing and Rehabilitation Center	Current	****	****	****	***
	07/2015	*****	****	*****	**
Fordham Nursing and Rehabilitation Center	Current	***	***	****	***
	08/2016	***	****	***	*
Long Beach Nursing and Rehabilitation Center	Current	***	***	****	***
	08/2016	****	**	*****	*****
Downtown Brooklyn Nursing & Rehabilitation Center	Current	***	***	****	***
	06/2018	*****	****	*****	†
Margaret Tietz Nursing & Rehabilitation Center	Current	*****	****	*****	***
	02/2019	*****	*****	*****	**
Carillon Nursing and Rehabilitation Center	Current	*****	****	*****	***
	11/1994 (CMS ratings started 1/2009)	****	*****	****	*
	Current	*****	****	*****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
West Village Rehabilitation and Nursing Center	08/2023	*****	*****	*****	****
Connecticut					
Cassena Care at Norwalk	Current	*	*	***	**
	06/2013	***	**	****	****
Cassena Care at Stamford	Current	**	**	****	***
	11/2015	****	**	*****	****

‡Data Not Available

Data date: 05/2025

End-Dated Ownership					
New York					
Barnwell Nursing and Rehabilitation Center	12/2017	*	*	**	**
	11/2003 (CMS ratings started 1/2009)	***	****	**	*
Mills Pond Nursing and Rehabilitation Center	04/2018	**	**	****	‡
	10/2010	**	**	****	***
Sayville Nursing and Rehabilitation Center	04/2018	***	**	*****	‡
	12/2012	***	****	****	*
Connecticut					
Cassena Care at New Britain*	12/2020 (11/2020 data)	***	***	****	***
	11/2015	**	**	***	***

*Facility voluntarily closed on 12/31/2020 (per the applicant: The facility was consistently losing money and it became unattainable for the operators to maintain operations.)

‡Data Not Available

Enforcement History

New York

A review of the operations of East Neck Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-23-025 for surveillance findings on 12/16/2022. Deficiencies were found under 10 NYCRR 415.19(a)(1-3) - Infection Control. The facility failed to follow infection and control program procedures in two instances.
- The facility was assessed a federal CMP of \$650 on 07/12/2021 for failure to report COVID data under F884 at an F level.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-15-039 for surveillance findings on 03/21/2014. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) - Resident Rights and 415.26 & 415.27(a-c) - Administration. The facility failed to respect the resident's right to accept/refuse treatment as well as the right to formulate advance directives. The facility was also cited by CMS on 03/21/2014 for multiple deficiencies, including F155, F490, and F520, all at an L level.

A review of the operations of Workmen's Circle MultiCare Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-220 for surveillance findings on 05/11/2021. Deficiencies were found under 10 NYCRR 415.12(h)(1) - Quality of Care (Accidents). The facility improperly transferred a resident, resulting in a fall and injury. The facility was also assessed a federal CMP of \$11,300 on 05/11/2021 under F689 at a G level.

A review of the operations of Shore View Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals no enforcements.

A review of the operations of Morningside Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- Per applicant: The facility was fined \$2,000 for surveillance findings on 12/10/2020. Deficiencies were found under 10 NYCRR 415.19 - Infection Control. The facility failed to maintain a required supply of PPE.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-20-062 for surveillance findings on 08/13/2020. Deficiencies were found under 10 NYCRR 415.5(h)(2) - Quality of Life and 415.19(b)(4) & 415.19(c) - Infection Control.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-20-019 for surveillance findings on 05/20/2020. Deficiencies were found under 10 NYCRR 400.2 and 415.30 - Other Laws, Codes, Rules and Regulations, and General Records.

A review of the operations of Peninsula Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- Per applicant: The facility was assessed a US DOL-OSHA fine of \$12,468 for surveillance findings from 12/28/2016-05/11/2017 for failures related to the Respiratory Protection Program (FIT testing documentation), Hazards Communication Program, and Sharps Injury Log.

A review of the operations of Upper East Side Rehabilitation and Nursing Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$12,000 pursuant to Stipulation and Order NH-18-021 for surveillance findings on 02/20/2018. Deficiencies were found under 10 NYCRR 415.12(m)(2) - Quality of Care/No Significant Med Errors and 415.15(b)(2)(iii) - Physician Services/Physician Visits. The facility failed to ensure that the residents are free of any significant medication errors and that the responsible physician reviews the resident's total program of care, including medications and treatments, at each regularly scheduled visit. The facility was also assessed a federal CMP of \$7,023 on 02/20/2018 under F333 and F386, both at a G level.

A review of the operations of Sea Crest Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$2,000 for surveillance findings on 10/10/2023. Deficiencies were found under 10 NYCRR 415.19(a)(1-3) - Infection Control and 415.19(b)(4) - Infection Control (Handwashing).

A review of the operations of Fordham Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-23-068 for surveillance findings on 08/31/2022. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Abuse - Verbal, sexual, physical, and mental corporal punishment, and involuntary seclusion. The facility failed to ensure that a resident was free from physical abuse. Specifically, a facility staff member slapped and then pushed a walker-using resident, causing the resident to fall to the floor. The resident sustained a left femoral neck fracture as a result. The facility was also assessed a federal CMP of \$16,180 on 08/31/2022 under F600 at a G level. Per applicant: DAB Appeal Pending.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-24-021 for surveillance findings on 04/22/2022. Deficiencies were found under 10 NYCRR 415.3(d)(1)(vii), 415.12 and 415.4(b)(1) - Resident's Legal Rights (each resident shall have the right to be free from verbal,

sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints); Quality of Care; Resident Behavior and Facility Practices - Staff treatment of residents (The nursing home shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents and misappropriation of resident property). The facility failed to ensure that a resident was free from sexual abuse. The facility was also assessed a federal CMP of \$43,585 on 04/22/2022 under F600 at a J level. Per applicant: DAB Appeal Pending.

A review of the operations of Long Beach Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$2,000 for surveillance findings on 09/13/2023. Deficiencies were found under 10 NYCRR 415.19(a)(1-3) - Infection Control.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-211 for surveillance findings on 07/13/2021. Deficiencies were found under 10 NYCRR 415.19(b)(4) - Infection Control (Handwashing). Specifically, the facility failed to maintain an infection prevention and control program and ensure hand hygiene occurs during wound care to prevent cross-contamination. The facility was also assessed a federal CMP of \$5,000 on 07/13/2021 under F880 at a D level.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-20-056 for surveillance findings on 07/27/2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 145.19(a)(2) - Infection Control. Specifically, the facility failed to ensure that all staff used facemasks covering their nose and mouth on all units when within 6 feet of residents.

A review of the operations of Downtown Brooklyn Nursing & Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-027 for surveillance findings on 10/29/2021. Deficiencies were found under 10 NYCRR 415.19(a) - Infection Control. Specifically, the facility failed to ensure that infection control practices were maintained for a resident receiving respiratory care (oxygen tubing was observed on the floor on multiple occasions).

A review of the operations of Margaret Tietz Nursing & Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-24-064 for surveillance findings on 05/29/2024. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Accident-Free Environment. The facility failed to ensure residents received adequate supervision and assistance devices consistent with a resident's needs, goals, and care plan when a resident requiring the use of a mechanical lift for transfer was transferred without a mechanical lift and scraped their left leg against a wheelchair, requiring 13 stitches. The facility was also assessed a federal CMP of \$8,512 on 05/29/2024 under F689 at a G level.
- The facility was assessed a federal CMP of \$650 on 02/22/2021 for failure to report COVID data under F884 at an F level.

A review of the operations of Carillon Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-24-032 for surveillance findings on 02/13/2024. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Abuse - Verbal, sexual, physical, and mental, corporal punishment, and involuntary seclusion. Specifically, the facility failed to prevent staff on resident abuse. The facility was also assessed a federal CMP of \$22,522.50 on 02/13/2024 under F600 at a G level.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-24-027 for surveillance findings on 03/10/2021. Deficiencies were found under 10 NYCRR 415.19(a)(1) - Infection Control. The facility failed to establish and maintain an infection control program under which it investigates, controls, and takes action to prevent infections in the Facility when it failed to ensure that all authorized visitors entering the facility have a verified negative COVID-19 test result within seven days prior to entry. Deficiencies were also found under 400.2 - Other laws, codes, rules, and regulations. The facility failed to comply with Executive Order 202.1 (9 NYCRR 8.202.1)

which required all authorized visitors to have a verified negative COVID-19 test result within seven days prior to entry into the facility.

A review of the operations of West Village Rehabilitation and Nursing Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was assessed federal CMPs of \$1,881.75 on 02/20/2024 and \$3,387.15 on 01/30/2024 for failure to report COVID data under F884 at an F level.

A review of the operations of Barnwell Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on 09/26/2013 and 02/01/2013. Deficiencies on 09/26/2013 were found under 10 NYCRR 415.4(b)(1)(2)(3) - Staff Treatment of Residents and Free from Mistreatment, Neglect and Misappropriation of Property, Nurse Aide Registry and 415.12 Quality of Care - Highest Practicable Potential. Deficiencies on 02/01/2013 were found under 10 NYCRR 415.12(m)(2) Quality of Care - No Significant Medication Errors, 415.26 - Administration and 415.27(a-c) – Administration, Quality Assessment and Assurance. The facility was also assessed a federal CMP of \$8,000 on 09/26/2013 under F225 at a J level and of \$5,000 on 02/01/2013 under F333, F490, and F520, all at a K level.
- The facility was assessed a federal CMP of \$5,000 on 01/15/2013 under F323 at an E level for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent avoidable accidents.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 for surveillance findings on 03/13/2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) - Quality of Care - Accidents/Supervision. The facility failed to ensure that the resident environment remains as free of accident hazards as possible. The facility was also assessed a federal CMP of \$3,250 on 03/13/2012 under F323 at a K level.

A review of the operations of Mills Pond Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-050 for surveillance findings on 07/12/2017. Deficiencies were found under 10 NYCRR 415.12(m)(2) - Quality of Care. The facility failed to ensure that residents were free of any significant medication errors.

A review of the operations of Sayville Nursing and Rehabilitation Center under 10 NYCRR § 600.2 requirements for approval reveals no enforcements.

A review of the operations of Morningside at Home (ALP) under 10 NYCRR § 600.2 requirements for approval reveals the following:

- Per the applicant: A federal CMP of \$540 was assessed on 02/02/2017 for violations of Article 7 of the Social Services Law of NY and 18 NYCRR 487.10(e)(2).

A review of the operations of Cassena Care at Home under 10 NYCRR § 600.2 requirements for approval reveals the following:

- Per the applicant: The agency was issued multiple citations on 10/08/2024 including G0406 – 42 CFR § 485.50 (Patient Rights) – failure to ensure all patients receive the necessary goods and/or services to avoid hospitalization and/or readmission; G0510 – 42 CFR § 484.55 (Comprehensive Assessment of Patients) – failure to ensure each patient's comprehensive assessment accurately reflects the patient's status, which is critical in assisting the agency in developing the patient's plan of care and G0572 – 42 CFR § 484.60 (Planning Coordination of Services and Quality of Care) – failure to ensure all patients receive care and services as identified in the plan of care and failed to ensure all patient care orders, including verbal orders, are documented in the patient's clinical record.

Connecticut

A review of the operations of Cassena Care at Norwalk under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$38,422 on 10/09/2024 for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under F600 (per the applicant).
- The facility was assessed a federal CMP of \$159,803 and a payment denial of 27 days on 10/26/2023 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a K level and for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under F600 at a H level. The facility failed to ensure that a resident did not leave the building unattended (F689) and failed to ensure residents were free from physical abuse resulting from multiple resident-to-resident altercations resulting in multiple significant injuries for one resident (F600).
- The facility was assessed a federal CMP of \$21,045 and, per applicant, a Connecticut state fine of \$4,100 on 11/28/2018 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a G level.
- The facility was assessed a federal CMP of \$13,003 and, per applicant, a Connecticut state fine of \$3,000 on 04/09/2018 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents under F689 at a J level.
- The facility was assessed a federal CMP of \$24,980 and, per applicant, a Connecticut state fine of \$2,530 on 07/13/2017 for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents under F323 at a G level.
- The facility was assessed a federal CMP of \$2,316 on 09/15/2016 for failure to ensure that residents are safe from serious medication errors under F333 at a G level.
- Per applicant: The facility was assessed a federal CMP of \$8,750 and Connecticut state fines of \$2,370 and \$3,000 on 03/31/2016 for failure to protect each resident from mistreatment, neglect, and misappropriation of personal property under F224 at a J level and for failure to provide necessary care and services to maintain or improve the highest well-being of each resident under F309 at a J level.
- The facility was assessed a federal CMP of \$15,250 and, per applicant, a Connecticut state fine of \$3,000 on 01/26/2016 for failure to protect each resident from all abuse, physical punishment, and involuntary separation from others under F223 at a G level and for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents under F323 at a J level.
- The facility was assessed a federal CMP of \$13,650 and, per applicant, a Connecticut state fine of \$1,370 on 02/28/2014 for failure to provide necessary care and services to maintain or improve the highest well-being of each resident under F309 at a G level and for failure to give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores under F314 at a G level.
- Per applicant: The facility was assessed a Connecticut state fine of \$1,160 on 12/23/2013 for a shower fall/injury.
- Per applicant: The facility was assessed a Connecticut state fine of \$360 on 10/17/2013 for failure to keep the facility free from accidents, hazards, and risks and for failure to provide supervision to prevent avoidable accidents.
- The facility was assessed a federal CMP of \$7,850 and, per applicant, a Connecticut state fine of \$1,020 on 09/05/2013 for failure to provide necessary care and services to maintain or improve the highest well-being of each resident under F309 at a J level and for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents under F323 at a J level.
- The facility was cited by CMS on 02/05/2013 for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents under F323 at a G level.
- The facility was assessed a federal CMP of \$3,250 on 01/04/2013 for failure to protect each resident from all abuse, physical punishment, and involuntary separation from others under F223 at a D level.

A review of the operations of Cassena Care at Stamford under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$16,489 on 06/03/2022 for failure to provide and implement an infection prevention and control program under F880 at a D level.
- The facility was assessed a federal CMP of \$5,349 on 08/25/2021 for failure to provide and implement an infection prevention and control program under F880 at an E level.
- Per applicant: The facility was assessed a Connecticut state fine of \$1,140 on 09/02/2020 for failures related to CT General Statutes Section 19a-524 through 19a-528.
- The facility was assessed a federal CMP of \$11,000 on 08/23/2018 for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under F600 at a G level and for failure to provide appropriate treatment and care according to orders, resident's preferences and goals under F684 at a G level.

A review of the operations of Cassena Care at New Britain under 10 NYCRR § 600.2 requirements for approval reveals the following:

- The facility was assessed a federal CMP of \$21,060 and, per the applicant, a Connecticut state fine of \$1,530 on 08/16/2018 for failure to provide appropriate treatment and care according to orders, resident's preferences, and goals under F684 at a G level.
- The facility was assessed a federal CMP of \$17,821 and, per applicant, a Connecticut state fine of \$1,730 on 09/15/2016 for failure to provide necessary care and services to maintain or improve the highest well-being of each resident under F309 at a G level, for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent avoidable accidents under F323 at a G level and for failure to give each resident enough fluids to keep them healthy and prevent dehydration under F327 at a G level.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2023) results and the first- and third-year operating budget, in 2025 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>RHCF Bed Revenues</u>						
Commercial FFS	\$2,286.08	\$2,169,488	\$525.36	\$5,951,800	\$538.50	\$6,100,300
Medicare FFS	\$972.59	6,099,135	\$966.22	7,307,550	\$975.88	7,380,550
Medicare MC	\$639.66	2,371,204	\$825.00	3,106,950	\$875.00	3,295,250
Medicaid FFS	\$351.89	18,171,624	\$373.73	17,068,779	\$373.73	17,068,779
Medicaid MC	\$532.62	6,886,234	\$373.75	3,678,821	\$373.75	3,678,821
Private Pay	\$599.69	<u>6,392,734</u>	\$525.34	<u>4,761,200</u>	\$538.49	<u>4,880,300</u>
Total Rev. by Payor		\$42,090,419		\$41,875,100		\$42,404,000
<u>Vent Bed Revenues</u>						
Commercial FFS	\$1,547.64	\$917,750	\$700.00	\$280,000	\$700.00	\$280,000
Medicare FFS	\$1,267.34	2,259,670	\$1,218.58	2,071,590	\$1,218.58	2,071,590
Medicare MC	\$1,157.58	688,760	\$898.61	726,975	\$898.61	726,975
Medicaid FFS	\$679.59	9,228,859	\$742.19	11,310,286	\$742.19	11,310,286
Medicaid MC	\$680.93	4,107,355	\$730.60	4,894,274	\$730.60	4,894,274
Private Pay	\$1,133.83	<u>671,225</u>	\$1,291.22	<u>1,562,375</u>	\$1,291.22	<u>1,526,375</u>
Total Rev. by Payor		\$17,873,619		\$20,845,500		\$20,845,500
Ancillary Revenue		\$348,862		\$249,600		\$255,500
Net Pat. Svc. Rev.		\$60,312,900		\$62,970,200		\$63,505,000
Other Oper. Rev.		2,257,770		1,200		1,200
Total Project Rev.		\$62,570,670		\$62,971,400		\$63,506,200
<u>Expenses</u>						
Operating	\$650.58	\$67,848,588	\$456.40	\$51,706,506	\$458.82	\$51,980,991
Capital	<u>\$17.47</u>	<u>1,910,426</u>	<u>\$85.91</u>	<u>9,732,994</u>	<u>\$86.11</u>	<u>9,755,876</u>
Total Expenses	\$638.05	\$69,759,014	\$542.31	\$61,439,500	\$544.93	\$61,736,867
Net Income/(Loss)		<u>(\$7,188,344)</u>		<u>\$1,531,900</u>		<u>\$1,769,333</u>
Patient Days (RHCF)		86,156		87,236		87,236
Patient Days (Vent)		23,175		26,057		26,057
Occupancy (RHCF)		98.35%		96.99%		96.99%
Occupancy (Vent)		79.37%		89.24%		89.24%

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

- The Current Year reflects the facility's 2023 RHCF-4 cost report information.
- Current Year Commercial Fee for Service rates include vent revenues. The projected reduction in the FFS rate in Years One and Three is attributable to the reclassification of RHCF revenue and vent revenue.
- Medicare rates are projected based on Federal rates for the Medicare Prospective Payment System for fiscal year 2023, with a 2.50% increase to reflect 2025 dollars.
- The increase in RHCF's Commercial and Medicare FFS utilization between the Current Year and Years One and Three is based on the anticipated market conditions and the needs of upstream and downstream providers.

- The decline in utilization, rates, and revenue dollars for Commercial and Medicare FFS for vented beds is based on a conservative assumption that the majority of vent days will be recorded at the lower Medicaid rate.
- Medicaid rates are projected based on the reimbursement methodology under statewide pricing.
- The projected reduction in RHCF Medicaid FFS and MC revenue dollars and patient days between the Current Year and Years One and Three is based on the anticipated market conditions and the needs of upstream and downstream providers.
- Private Pay and Other rates are based on similar facilities in the same geographical area and an annual increase of 2.50%.
- Reduction in RHCF Private Pay revenue dollars and patient days between the Current Year and Years One and Three is based on the anticipated market conditions and the needs of upstream and downstream providers.
- The increase in vent bed utilization is predicated on the assumption that operations will continue to return to pre-pandemic levels.
- The \$7,188,344 net loss reported in the Current Year is due to revenue and expense fluctuations resulting from the COVID-19 pandemic and the academic cost structure currently in place.
- Staffing assumptions are based on historical operations, analysis of similar facilities, and experience of the proposed operator. Projected First- and Third-year staffing levels and costs are based upon the operator's Current Year staffing plan and reflect compliance with the minimum staffing requirements outlined in Public Health Law (PHL) §2895-B and direct spending requirements outlined in Title 10 of the New York Codes, Rules and Regulations (NYCRR) § 415.34.
- December 2022 and 2023 occupancy levels reached 95.7% and 98.4%, respectively. Queens County occupancy rates for December 2022 and 2023 are 87.8% and 90.9%, respectively.
- The facility's 2022 Medicaid admission rate of 22.7% was below the Queens County 75% threshold rate of 33.0%. Silvercrest's 2023 Medicaid admissions of 60.1% exceeded Queens County's 75% threshold rate of 31.8%.

Utilization by payor source is summarized below:

	<u>Current Year</u>		<u>Years One and Three</u>	
<u>Payor – RHCF</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Commercial FFS	949	1.10%	11,329	12.99%
Medicare FFS	6,271	7.28%	7,563	8.67%
Medicare MC	3,707	4.30%	3,766	4.32%
Medicaid FFS	51,640	59.94%	45,672	52.35%
Medicaid MC	12,929	15.01%	9,843	11.28%
Private Pay	<u>10,660</u>	<u>12.37%</u>	<u>9,063</u>	<u>10.39%</u>
Total	86,156	100.00%	87,236	100.00%

	<u>Current Year</u>		<u>Years One and Three</u>	
<u>Payor - Vent</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Commercial FFS	593	2.56%	400	1.54%
Medicare FFS	1,783	7.69%	1,700	6.52%
Medicare MC	595	2.57%	809	3.11%
Medicaid FFS	13,580	58.60%	15,239	58.48%
Medicaid MC	6,032	26.03%	6,699	25.71%
Private Pay	<u>592</u>	<u>2.55%</u>	<u>1,210</u>	<u>4.64%</u>
Total	23,175	100.00%	26,057	100.00%

The applicant submitted a business plan outlining measures and initiatives that the facility will take to improve its financial position. The proposed measures include the following:

- Census and revenue management, which includes a marketing program aimed at raising awareness of facilities' 5-Star CMS quality rating in the hospital referral departments, as well as, outreach initiatives to increase ventilator referrals from New York Presbyterian Hospital (NYPH) and other nearby facilities.
- Expense management with a focus on finding opportunities to replace the academic cost structure with a cost structure aligned with community best practices.

- Additional initiatives include streamlining and optimization of services, reducing operational costs by reducing overtime usage, outside contractors, managing transfers, and physician oversight.

Asset Purchase Agreement (APA)

The applicant has submitted an executed APA to acquire the RHCF's operating interests. The terms are summarized below:

Date:	December 12, 2022
Seller:	Silvercrest
Buyer:	Silvercrest Acquisition I, LLC
Facility:	320-bed Article 28 skilled nursing facility located at 144-45 87 th Avenue Jamaica, New York 11435
Asset Acquired:	Rights, title and interest in and all operating assets of the facility including without limitation all tangible personal property used or to be used in the business operations of the facility, operating certificate, physical plant, contents, the assumed contracts, inventory, licenses (to the extent transferrable), all books and records, the intellectual property rights associated with the facility, marketing information, computer software and software licenses, the name of seller "The Silvercrest Center" and any name or phrase which includes "Silvercrest" and all intellectual property related thereto, all telephone numbers and facsimile numbers used by the facility, all security deposits and prepayments held by seller for future services to be performed by the facility, the Medicare and Medicaid provider numbers related to the facility, the resident trust funds, all books, files, and other business records attributable to business operations of the facility, and all goodwill.
Excluded Assets:	Cash, deposits (other than resident funds), cash equivalents, accounts receivable, prepaid expenses, securities and refundable deposits, all right, title and interest in and to the name "New York Presbyterian Hospital", or any manner that implies the facilities' affiliation with New York Presbyterian Hospital, all of sellers or affiliate of sellers proprietary manuals, marketing materials, standard operating procedures, and marketing brochures, data and studies or analyses except to the extent they are used without the name "New York Presbyterian Hospital", portions of inventory and other assets disposed of, expended or canceled prior to effective date, assets owned and provided by vendors, all claims, rights, interests and proceeds to state or local tax refunds (property and COVID-19 employee tax credits), all of sellers corporate record books and minute books, overpayments to any third parties, sellers bank accounts, reimbursement owed by any payor or health plan and payment from government agencies or programs related to COVID-19, third party retroactive rate increases, refunds, credits, proceeds of any appeal, donations and bequests, all right, title and interest in and to the name "Silvercrest Senior Housing Development Fund Corporation".
Purchase Price:	\$3,000,000
Escrow Deposit	\$150,000 upon execution of the APA
Payment of Purchase Price:	\$2,850,000 due at closing less Escrow Deposit.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 13, 2024, the facility has no outstanding Medicaid liabilities.

Real Property Agreement

The applicant submitted an executed Real Property Agreement to acquire the RHCF's real property, as summarized below:

Date:	December 12, 2022
Seller:	Silvercrest
Buyer:	Silvercrest Acquisition II, LLC
Assets Acquired (Real Estate):	All seller's rights, title, and interest in and to the Real Property (land, buildings, and improvements) located at 144-25 87 th Avenue, Jamaica, NY (Queens County).
Excluded Assets (Real Estate):	N/A
Purchase Price:	\$93,000,000
Payment of the Purchase Price:	\$4,850,000 deposited and held in escrow. \$88,150,000 due at closing.

Draft Assignment and Assumption Agreement

The applicant submitted a draft Assignment and Assumption Agreement to acquire the right, title, and interest in the assumed contracts, summarized below:

Assignor:	Silvercrest
Assignee:	Silvercrest Acquisition I, LLC
Assignment and Assumption:	<p>Assignor desires to assign to Assignee all of its rights, title, and interest in the Assumed Contracts; and Assignee desires to accept such assignment effective as of the Effective Time.</p> <p>As of the Effective Time, Assignor transfers, assigns, and sets over unto the Assignee all of its rights, title and interest in and to the Assumed Contracts, and Assignee hereby undertakes, assumes and agrees to pay, perform or otherwise discharge when due all of the Assumed Contracts subject to and in accordance with the provisions set forth in the APA.</p>

Consulting Agreement

The applicant submitted an executed Consulting Agreement to acquire the RHCF's real property, as summarized below:

Date:	July 31, 2023
Consultant:	Cassena Care, LLC
Facility Operator:	Silvercrest Acquisition I, LLC
Term:	Agreement will begin upon the effective date of the operating certificate to be issued by the New York State Department of Health and will continue unless terminated.
Consulting Services:	Plant and maintenance consulting, billing and collection consulting services, accounting, financial services, payroll and accounts payable, clinical policies and procedure review and implementation, service contracts, and purchasing
Service Fee:	\$1,500,000 (\$125,000/month)

Cassena Care, LLC will be providing all of the above services, and Silvercrest Acquisition I, LLC will retain ultimate control in all final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Lease Agreement

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

Date:	July 17, 2023
Landlord:	Silvercrest Acquisition II, LLC
Tenant:	Silvercrest Acquisition I, LLC d/b/a Silvercrest Nursing and Rehabilitation Center
Facility:	Long-term skilled nursing facility located at 144-45 87 th Avenue in Briarwood, New York.
Term:	20 years from Commencement Date
Rent:	\$9,600,000 per year (\$800,000 per month), rent will increase 2% thereafter throughout the term.
Provisions:	Taxes, insurance, utilities.

The lease arrangement is a non-arms-length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant in that there is a common membership between the entities. The applicant has submitted a facility market lease rate analysis report intended to provide an opinion of the market rent, which appears to be consistent with several market participants and market comparables.

Capability and Feasibility

There are no project costs associated with this application. The combined purchase price for the RHCf's operations and realty is \$96,000,000. The purchase price for the operations is \$3,000,000 and will be met with equity from the proposed members. The purchase price for the real estate is \$93,000,000 and will be met with equity of \$11,400,000 from the proposed realty members and a non-amortized bridge loan of \$81,600,000 with a three-year term. The loan will bear an interest rate equal to the prevailing SOFR rate plus 2.65% to 2.95%, plus a credit spread adjustment of 0.10%. The SOFR rate is 5.31% for an estimated interest rate of 7.96% to 8.26%. Monthly payments cover interest only and the principal amount due at maturity. Bank of America Merrill Lynch provided a letter of interest for the loan at the stated terms. The borrowers intend to refinance the mortgage to a long-term permanent financing program prior to the end of the bridge loan term. The four proposed members provided affidavits confirming their willingness to use personal resources in the event that refinancing, prior to the end of the loan term, is unavailable.

The working capital requirement is estimated at \$10,239,917, based on two months of Year One expenses, and will be funded with equity from the proposed members. BFA Attachment A, Net Worth of Proposed Members of Silvercrest Acquisition I, LLC, reveals sufficient equity overall to fund the acquisition and working capital needs. A \$150,000 cash deposit was paid on the execution of the APA for operations, and a \$4,850,000 cash deposit was paid on the execution of the Real Property Agreement for the sale of the realty interest, with a remaining cash balance of \$91,000,000.

BFA Attachment F, Pro-Forma Balance Sheet, as of the first day of operation, indicates positive members' equity of \$13,354,000. It is noted that the assets include \$3,000,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be \$10,354,000. The submitted budget indicates a net income of \$1,531,900 and \$1,769,333 in Years One and Three, respectively. The budget appears reasonable.

BFA Attachment B, 2022-2024 Financial Summary of Silvercrest shows the facility maintained a negative working capital position and negative equity between 2022 and 2023. In 2022 and 2023, Silvercrest reported net losses of (\$5,358,226) and (\$6,298,026), respectively. The working capital and net assets deficiencies are impacted by the operating losses of the facility. NYPH continues to support Silvercrest with extensions on payments for NYPH services and through a line of credit to assist the facility in its post-COVID-19 recovery and implementation of its initiatives. Both 2022 and 2023 losses are attributable to adverse impacts from the COVID-19 pandemic, including a slower recovery of vent patients post-COVID-19, who have higher complexity and reimbursement rates. The losses were further impacted by staffing shortages, higher turnover, and increased use of agency and temporary staff, resulting in labor cost increases.

For the year ending December 31, 2024, Silvercrest maintained a negative working capital position and, a negative equity position, and reported a net loss of (\$6,260,278). The net equity deficit position is

attributable to \$45,181,247 reported as related party debt due to NYPHS. The reported loss is attributable to lower occupancy of the vent beds and higher overall operating costs. Silvercrest has implemented a number of initiatives to reduce operating losses, including census and revenue management, and expense management, with a goal of replacing the academic cost structure with one based on community best practices, reducing overtime, limiting outside contractors, and optimization of contracted services.

BFA Attachment D, Financial Summary of Proposed Members' Affiliated Nursing Homes, shows that between 2021 and 2022, the affiliated facilities maintained positive net asset and working capital positions, as well as, positive net income from operation. Margaret Tietz, Downtown Brooklyn, Shore View, and Workmen's Circle, each reported negative working capital. Fordham reported a net loss, and Peninsula Nursing reported negative working capital, negative equity, and a net loss. For the period ending December 31, 2023, the affiliated facilities maintained positive net assets, working capital positions, and a positive net income except for Margaret Tietz, Downtown Brooklyn, Morningside, Sea Crest, and Shore View, which reported negative working capital. Peninsula, Fordham, Workmen's Circle, and Lower West Side reported negative working capital, negative equity, and a net loss. The reported net losses are attributable to increased operating costs, including supplies and labor. The operators are exploring cost-reduction initiatives and improving the census.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A	Net Worth of Proposed Members of Silvercrest Acquisition I, LLC
BFA Attachment B	2022-2024 Financial Summary of Silvercrest Center for Nursing and Rehabilitation
BFA Attachment C	2023 Certified Financial Statement for Silvercrest Center for Nursing and Rehabilitation
BFA Attachment D	Financial Summary of Proposed Members' Affiliated Nursing Homes
BFA Attachment E	Silvercrest Acquisitions I, LLC. Ownership Chart
BFA Attachment F	Pro Forma Balance Sheet for Silvercrest Center for Nursing and Rehabilitation

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10th day of April 2025, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Silvercrest Acquisition I, LLC as the new operator of Silvercrest Nursing and Rehabilitation Center, a 320-bed Residential Health Care Facility currently operated by Silvercrest at 144-45 87th Avenue, Jamaica, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

231213 E

FACILITY/APPLICANT:

Silvercrest Acquisition I, LLC d/b/a
Silvercrest Nursing and Rehabilitation
Center

APPROVAL CONTINGENT UPON:

1. Submission of a final financing package acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a photocopy of the executed Consulting Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.

STATE OF NEW YORK: DEPARTMENT OF HEALTH

-----X

IN THE MATTER

OF

THE PROPOSED DISAPPROVAL BY THE PUBLIC HEALTH
AND HEALTH PLANNING COUNCIL OF AN APPLICATION
FOR ESTABLISHMENT AND CONSTRUCTION OF A
MIDWIFERY BIRTH CENTER

Report
and
Recommendation

By

COIT HOUSE, LLC.
414 Virginia Street
Buffalo, New York 14201

APPLICATION NO. 202086 B

Petitioner

-----X

To: The New York State Public Health and Health Planning Council
Department of Health, State of New York

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Dates: March 13 and 20, 2024

Parties: New York State Department of Health
Corning Tower, Room 2412
Empire State Plaza
Albany, New York 12237
By: Mark Fleischer, Esq.

Maura Winkler
Coit House, LLC
414 Virginia Street
Buffalo, New York 14201
By: Frederick B. Cohen, Esq.
Jacob J. Honan, Esq.
Rupp Pfalzgraf LLC
1600 Liberty Building
Buffalo, New York 14202

JURISDICTION

Coit House, LLC (Petitioner) applied to the Department of Health (Department) for written approval to establish a midwifery birth center. Pursuant to Public Health Law (PHL) § 2801-a, the application was then presented to the Department's Public Health and Health Planning Council (PHHPC). On February 9, 2023, the PHHPC voted to disapprove it. (Exhibit 8.) The Petitioner requested this hearing pursuant to PHL § 2801-a(2).

The notice of hearing states that the PHHPC's proposed disapproval is based on the character and competence of the Petitioner's principal, and an active and open investigation into Fika Midwifery, PLLC by the New York State Education Department's Office of Professional Discipline. (Exhibit 1.)

HEARING RECORD

Department exhibits:	1-20
Department witnesses:	Shelly Glock, Director, Center for Health Care Facility Planning, Licensure and Finance
Petitioner witnesses:	Maura Winkler, Operator and Principal, Coit House, LLC
Petitioner exhibits:	A-S

A transcript of the proceeding was made. (T 1 - 414.) Each party submitted a post-hearing brief. The record closed April 30, 2024.

FINDINGS OF FACT

1. On August 27, 2020, the Petitioner applied for a certificate of need (CON) to establish a midwifery birth center at 414 Virginia Street, Buffalo, New York. The Department acknowledged the application in October 2020, upon the Petitioner's submission of all required schedules. (Exhibit 3; T 55-56.)

2. Maura Winkler, the proposed operator of Coit House, LLC, is the founder and director of midwifery at Fika Midwifery, PLLC. (Exhibit 5.)
3. The Department's Office of Primary Care and Health Systems Management (OPCHSM) reviewed the application and recommended that it be disapproved at the January 26, 2023 Establishment and Project Review Committee (EPRC) meeting. The motion to disapprove the Petitioner's application did not carry. (Exhibits 5, 7; Exhibit F.)
4. The Petitioner's application was then presented to the PHHPC for disposition pursuant to procedures set forth in PHL § 2801-a. (Exhibit 7.)
5. On February 9, 2023, PHHPC members voted to disapprove the Petitioner's CON application. (Exhibit 8.)
6. The Petitioner was offered and requested a hearing to contest the proposed disapproval. By notice dated April 21, 2023, this hearing was scheduled. The notice of hearing states:

The hearing shall be limited to the issues of whether Application # 202086 B should be disapproved on the grounds that (1) the Petitioner does not satisfy the Character and Competence Criteria requirement under PHL § 2801-a(3)(b); and/or (2) that there is an open investigation into Fika Midwifery, PLLC by the New York State Education Department's Office of Professional Discipline.

ISSUES

Should the Petitioner's CON application be disapproved on the grounds that the Petitioner's principal does not satisfy the Character and Competence Criteria requirement set forth in PHL § 2801-a(3)(b)?

Should the Petitioner's CON application be disapproved on the grounds that there is an open investigation into Fika Midwifery, PLLC by the Education Department's Office of Professional Discipline?

APPLICABLE LAW

The PHHPC shall not approve an application for establishment unless it is satisfied, insofar as applicable, as to: (a) the public need for the institution at the time and place and under the circumstances proposed; (b) the character, competence, and standing in the community, of the proposed incorporators, directors, sponsors, stockholders, members or operators (Character and Competence Criteria); (c) the financial resources of the proposed institution and its sources of future revenues; and (d) such other matters as it shall deem pertinent. PHL § 2801-a(3).

With respect to the Character and Competence Criteria, no approval shall be granted unless the PHHPC, having afforded an adequate opportunity to members of health systems agencies, if any, having geographical jurisdiction of the area where the institution is to be located to be heard, shall affirmatively find by substantial evidence as to each such incorporator, director, sponsor, principal stockholder or operator that a substantially consistent high level of care is being or was being rendered in each such hospital, home, residence, halfway house, hostel, or other residential facility or institution with which such person is or was affiliated. PHL § 2801-a(3)(b).

DISCUSSION

The Petitioner submitted a CON application for accreditation of its birthing center on August 27, 2020. (Exhibit 3.) By email dated September 24, 2020, Dr. Katherine Maloney, the Erie County Deputy Chief Medical Examiner, informed the Department of two infant deaths which she characterized as attributable to the gross negligence of the attending midwives from Ms. Winkler's midwifery practice which were being investigated by the New York State Education Department, Office of Professional Discipline (OPD). (Exhibit A, p. 161.) In a June 3, 2022 response to a request for additional information from the Department, Ms. Winkler

explained that she had not participated in either birth cited by Dr. Maloney and that the resultant infant deaths occurred while she was out of the country and/or on maternity leave. (Exhibit 9.)

On July 18, 2022, in response to a request for additional information from the Department regarding the Petitioner's submission of an updated schedule 2A to her application in which the Petitioner disclosed the open OPD investigation into Ms. Winkler and Fika Midwifery (the midwife practice owned by Ms. Winkler), the Petitioner included details of active malpractice lawsuits and a copy of an August 9, 2019 OPD request for 10 patient records and copies of the midwifery practice's policies regarding "delivery of care". The 2019 OPD request was made before the infant demises reported by Dr. Maloney. (Exhibits 9, 10, 12; T 375.) Yet, when addressing the EPRC and the PHHPC, as well as during this hearing, and in its post-hearing submission, the Petitioner continued to suggest that the investigation and resulting charges were unrelated to Ms. Winkler, the Petitioner's sole proposed operator, and centered only on the two deaths indicated in Dr. Maloney's correspondence. (Petitioner's Brief, pp. 4-5.) As discussed below, these assertions are not supported by the facts in this case. The PHHPC determination is clearly based primarily upon the OPD investigation, not Dr. Maloney's report.

The Department's Center for Health Care Facility Planning, Licensure and Finance (CPLF) is responsible for the licensing of Article 28 facilities operating in the state of New York, including midwife birthing centers. The CPLF makes a recommendation to the EPRC or the PHHPC, presents information to support its recommendation, and answers questions that EPRC or PHHPC members have. (T 148-49.)

The CPLF, along with the Department's Division of Legal Affairs, advised Ms. Winkler that it was unable to recommend approval of the Petitioner's CON application because the applicant did not satisfy the Character and Competence criteria. (T 140.) The Department's

concerns centered on the OPD's open investigation into Ms. Winkler's midwifery practice. (T 137, 141, 270-71.) Although the Department completed its review of the Petitioner's entire CON application, it determined not to raise other identified issues involving the Coit House's architecture, such as a lack of handwashing facilities in examination rooms and a lack of Americans with Disabilities Act (ADA)-compliant bathrooms, with the EPRC and PHHPC as bases for recommending application disapproval. Simply put, the Department did not want to waste the Petitioner's resources on addressing architectural issues when the problems identified, even if rectified, would not eliminate the concerns raised by the OPD investigation. (T 127, 143-44, 186-87, 281.)

Ms. Winkler was informed that she had the following options: (a) she could withdraw her CON application until the OPD concluded its investigation; (b) amend her application with a different principal; or (c) proceed with the application process and obtain a decision from the PHHPC. Ms. Winkler elected to have the PHHPC consider her application as is. (Exhibit 8; T 142-44, 282, 378-79.)

When the Petitioner's application was presented to the EPRC for consideration, a motion was made to disapprove the application, which did not carry. As a result, the Petitioner's application was then considered by the entire PHHPC. After hearing from Ms. Winkler, along with various Department staff members, and considering all submitted documentation regarding the application, the PHHPC voted to disapprove the Petitioner's application, specifically on the grounds of the open OPD investigation into Ms. Winkler's midwifery practice, the resulting findings of which could negatively impact a determination regarding Ms. Winkler's character and competence. (Exhibit 8.)

While the Petitioner has repeatedly attempted to argue against the recommendation made to the PHHPC by the Department, namely, because the word “policy” was used by the Department’s attorney to explain why the Department could not approve a CON application for an applicant who is the subject of an open investigation, the Department’s recommendation was not the issue at this hearing. The issue remained, as stated in the Notice of Hearing, whether the CON application should be disapproved on the grounds that the Petitioner does not satisfy the Character and Competence Criteria requirement under PHL § 2801-a(3)(b); and/or (2) that there is an open investigation into Fika Midwifery, PLLC by the New York State Education Department’s Office of Professional Discipline. The Department’s recommendation is just that. It is not binding upon the PHHPC. Regardless of the choice of words adopted by the Department’s attorney addressing the PHHPC, it was and remains the PHHPC’s decision whether to approve the Petitioner’s CON application. For reasons discussed below, it is recommended that the PHHPC disapprove the Petitioner’s application.

The OPD investigation involves the very license upon which Ms. Winkler is able to practice midwifery. An open investigation into the applicant’s principal and her practice precludes a favorable recommendation because the Department is unable to ascertain the investigation’s outcome, which may include negative findings regarding quality of care and safety. (T-105-06.)

Ms. Winkler attempted to distance herself from the deaths reported by Dr. Maloney, but she made no mention of the more pertinent issue, the open OPD investigation, when addressing the EPRC or the PHHPC. (Exhibits 7, 12.) Several PHHPC members noted that as the director of her midwifery practice, Ms. Winkler remained responsible for the actions of her employees.

(Exhibit 8.) The members' expressed position is consistent with applicable law. PHL § 2801-a(3).

Ms. Winkler's lack of candor was neither a stated basis, nor an underlying reason for concerns regarding character and competence that prompted the Department's recommendation or the PHHPC's vote to disapprove the Petitioner's application. (T 190.) Rather, the Department had substantive concerns regarding the care directly provided by Ms. Winkler and her staff which could not be allayed without a concluded OPD investigation. Ms. Winkler's unwillingness to divulge important and relevant information regarding the basis upon which the PHHPC proposed to disapprove her CON application, even during the hearing, is disconcerting.

The Petitioner has largely rested upon its accreditation by the Commission for the Accreditation of Birth Centers (CABC), a member-funded organization (T 402-03), in response to questions by the Department regarding its CON application. However, the Petitioner never provided detailed information directly to the Department, and instead responded to the Department's inquiries by submitting information regarding CABC standards and offering CABC correspondence. (Exhibits 14, A, N, O, S; T 26, 187-88, 300, 302-04, 306-10, 319, 405-07.) The CABC is a member-funded organization with accreditation standards that are not entirely in compliance with federal and state regulations. (T 26, 187-88.) The Department has not delegated its licensing authority to CABC or any other accrediting agency. (T 180, 225.) Applicable law does not currently recognize CABC or other accreditation as a substitute for a full review by the Department with respect to CON applications for birthing centers.

The Department, including CPLF Director Shelly Glock, discussed CABC accreditation standards directly with the CABC by phone in 2021 in an effort to streamline the CON process for midwives. During that discussion, the CABC raised the Petitioner's CON application as an

example of what that organization viewed as barriers to New York State licensure. (T 180-81, 184-86.) After obtaining information from the CABC regarding requirements for birth center accreditation, the Department determined that the CABC's standards fell below various legal requirements, both state and federal. (T 70-74.)

When asked by the Department during the application process to submit information to show what changes her practice made after the two deaths reported by the Erie County Medical Examiner's Office, as well as other events being investigated by OPD, Ms. Winkler's response was vague, did not show a review of the cause of the infants' demises (root cause analysis), and did not reflect any acknowledgement of a need for changes in her practice. Her response did not include policies and procedures related to the complications that resulted in the demise of multiple babies and labor and delivery complications experienced by Ms. Winkler's female patients. Ms. Winkler did not identify changes made to her midwifery practice and how those changes, if any, were related to mitigating risks of labor and delivery at the birthing center. Instead, her responses relied heavily upon her CABC accreditation and its review process. (Exhibits 5, 12, 15, Exhibit A, pp. 204, 274, 323, 355-56, 394, 412, Exhibit F, O; T 161-65, 171, 180, 334-35.)

At the hearing, Ms. Winkler testified that her midwifery practice has updated countless policies and procedures in response to the infant demises. For instance, she claimed the practice now has open access files containing educational resources and risk criteria to determine whether a patient is not suitable for her practice. (T 312-32.) Her unsubstantiated testimony is not consistent with the policies and procedures submitted with her CON application (Exhibit A), a fact which she acknowledged. (T 317-18.) Similar to the Petitioner's earlier responses to the Department, the EPRC and the PHHPC, Ms. Winkler's testimony focused on claimed

submission of policies and procedures to the CABC and that accrediting agency's review process, rather than the Department. (Exhibits 7, 12; T 319, 334-36.)

The Petitioner touts the continuous quality improvement (CQI) scores submitted to the Department as evidence of its operator and principal's competence in midwifery. (T 29-30, 228-33, 339-49.) Although Ms. Winkler, on the Petitioner's behalf, provided CQI scores and identified (in response to a request for additional information from the Department) the benchmark being used, she again referred not to the Department criteria but to CABC standards and her practice's CABC accreditation, ostensibly as evidence of having appropriate standards and procedures in place. The Petitioner did not provide the Department with evidence of prior CQI activity and did not show the Department what information the CABC had reviewed to make its determination. (Exhibits 12, 14, 15; Exhibit A, p. 272-74; T 159-60, 180, 336-39, 347, 355-56.) The Department's review of the submitted CQI information focused on the Petitioner's actual practices, rather than the scores. The Petitioner's application failed to provide adequate information regarding the Petitioner's CQI process to address the Department's concerns regarding the birthing center's practices. (T 230-32.)

In a response to a request for additional information, Ms. Winkler acknowledged that by May 2020, the OPD advised her of "tentative charges" arising from the August 2019 OPD request for clinical records for 10 patients. That OPD investigation into Ms. Winkler and her practice commenced before the death of at least one of the newborns which Dr. Maloney had brought to the Department's attention. (Exhibits 12, 19, 20; Exhibit A pp. 268.)

The Petitioner insisted that the OPD investigation was separate from the two deaths reported by Dr. Maloney (T 395-97; Petitioner's Brief, p. 4, fn. 3) but also contended that the OPD investigation only involved the two events reported by Dr. Maloney and "was not an

investigation into Ms. Winkler's own license" (Petitioner's Brief, p. 5.) The Petitioner's brief incorrectly cites "Exhibit 2", page 375, lines 6-15. Exhibit 2 is a one-page February 22, 2023 letter from the PHHPC regarding the proposed disapproval of the Petitioner's application. It is therefore inferred that the Petitioner intended to reference the March 20, 2024 transcript, page 375, lines 6-15, in which Ms. Winkler testified that the OPD's August 2019 request for 10 patient records was unrelated to the deaths reported by Dr. Maloney.

Ms. Winkler testified further that, as of the March 20, 2024 hearing date, she was unaware of any investigation into her license regarding the two deaths reported by Dr. Maloney. (T 375.) Despite the Petitioner's consistent focus upon Dr. Maloney's correspondence and the deaths that she reported, the Petitioner has deliberately and consistently averted explaining the substance of the 2019 OPD investigation, despite the Petitioner's full knowledge of the encounters being investigated. Since the Petitioner also insisted on having the CON application reviewed prior to the close of the OPD investigation, it was incumbent upon the Petitioner to offer sufficient information regarding the subjects of the investigation. No such information was provided.

The 2019 OPD investigation has now reached a conclusion. In July 2023, well before this hearing, Ms. Winkler was served with notice of formal disciplinary proceedings against her midwifery practice. In the Matter of the Disciplinary Proceeding against Fika Midwifery PLLC, Calendar No. 33499, dated July 21, 2023. Ms. Winkler filed an Article 78 petition seeking injunctive relief against the OPD on multiple grounds, including that it lacks jurisdiction. *In the Matter of the Application of Maura Winkler and Fika Midwifery, PLLC v. New York State Education Department, Office of Professional Discipline, State Board of Midwifery, New York State Board of Regents*, Index No. 911187-23 (Sup. Ct. 2023). Ms. Winkler's assertion in her

Article 78 petition that the OPD lacks jurisdiction against her midwifery practice is particularly noteworthy inasmuch as the OPD issued Ms. Winkler's New York midwife license (T 399) and is the basis for the professional experience which she now asserts, at least in part, establishes her competence. The investigation which the Petitioner asserted "often are [sic] closed without any notification being provided to the party being investigated" (Petitioner's Brief, p. 5, footnote 4) has resulted in charges, the outcome of which remains to be determined.

The OPD has charged Ms. Winkler's practice with negligence on more than one occasion, including by Ms. Winkler herself in connection with one patient; gross negligence on a particular occasion (citing treatment of multiple patients); incompetence on more than one occasion; and committing unprofessional conduct in the profession of midwifery. Absent a hearing in which those charges are fully explored and adjudicated, and an ultimate determination made, the PHHPC's concerns regarding the competence of the Petitioner's principal and operator, Maura Winkler, are reasonable and directly concern patient safety and quality of care.

The Petitioner's presentation at the hearing ignored these serious issues and instead focused entirely on the two infant deaths brought to the Department's attention by the Erie County Deputy Chief Medical Examiner for which Ms. Winkler repeatedly, albeit vaguely, asserted that she was on maternity leave and/or out of the country. (T 309-10.) Rather than providing detailed information in the Petitioner's application and to the PHHPC, the Petitioner against rested upon a purported determination by the CABC regarding the infant deaths. (T 335-36.)

Kaleida Health is a major western regional hospital system that includes a children's hospital (Oishei) which Ms. Winkler testified was located only four minutes away from the Coit House birthing center and to which she would transfer patients in need of hospital care. Kaleida

Health terminated Ms. Winkler's hospital privileges in February 2019. (Exhibit A; T 332, 410-11.) While Ms. Winkler testified that her privileges were terminated in retaliation for having voiced concerns (T 297-98, 400-02), her lack of hospital privileges with Kaleida Health System and lack of referral arrangements with Kaleida Health System or Catholic Health System, the two major hospital providers in Western New York (Exhibit A, p. 234), are serious obstacles to implementing safe and timely hospital transfers for patients in urgent need. Ms. Winkler's explanation at the hearing for a lack of hospital privileges was that she "had decided to practice outside of the hospital exclusively." (T 298.) However, it is foreseeable that her lack of referral arrangements and hospital privileges could delay or otherwise hamper a hospital transfer and pose difficulties in ensuring that pertinent information is available to the receiving hospital when patients are transferred for emergent needs. In two active malpractice lawsuits against her midwifery practice as well as in the Statement of Charges issued by the OPD against Ms. Winkler's practice, the midwifery practice was cited for delayed ambulance calls when needed by patients, among other alleged omissions. (Exhibit A, pp. 265-67.)

The Petitioner suggested that a "delay" of 29 months from the Petitioner's application submission until disapproval was improper. (T 279-80; Petitioner's Brief, p. 18.) However, the Department did not merely shelve the application during that period of time. It requested additional information from the Petitioner regarding the open OPD investigation and attempted to resolve various architectural issues identified as unsafe for a birthing center. Additionally, the Department was awaiting a decision on whether proposed legislation regarding use of an accreditation agency would suffice for approving the CON application. As Ms. Glock explained at the hearing, "[b]y the time all of those pieces played out, it was about mid-2022," and a conversation with the Petitioner in September 2022 concluded with the Petitioner expressing a

desire to move the application forward. (T 281-82.) The duration of the Department's review afforded the Petitioner ample time to submit additional information it deemed relevant while also enabling the Petitioner to thoroughly prepare its presentation for the EPRC, the PHHPC, and this hearing.

The Petitioner has failed to establish that the PHHPC's recommendation was incorrect and not supported by substantial evidence. The active OPD investigation against Ms. Winkler's practice, of which the Department had no concrete information when offering to place the Petitioner's application on hold and ultimately, after the Petitioner's insistence that the application be put to a vote, recommending that the application be disapproved, has resulted in very serious charges against Ms. Winkler's practice.

The Department reviewed the Petitioner's application thoroughly and in good faith, while attempting to obtain additional and necessary information. While the Petitioner asserts that OPD investigations may "technically" remain open despite inactivity "for years" (Petitioner's Brief, p. 5, fn. 4), that assertion only underscores the sound rationale for the PHHPC's proposal to disapprove a CON application where the operator, as here, is the subject of such an investigation has reached a conclusion and which, as occurred here, resulted in charges against the operator in a manner that could negatively impact the operator's continued ability to operate as a supervisor of a birthing center.

The concerns expressed by the PHHPC in recommending the disapproval of the Petitioner's application are well-founded. The fact that Ms. Winkler's practice is now the subject of formal, significant charges of professional misconduct concerning patient care only underscores the gravity of the risks posed by approving an application for a midwifery practice that has failed to demonstrate an understanding of the dire consequences of ignoring the

conditions of individual patients and not transferring patients to a hospital immediately when the need arises. Ms. Winkler, as operator and principal of the midwifery practice and the birthing center, displayed a remarkable lack of insight regarding the losses sustained by her patients and has accepted no responsibility for adverse events that transpired at her birthing center.

The Petitioner asserts that the limited information available to the Department when it considered the CON application should have necessitated additional follow-up by the Department. (T 121, 124, 336.) The Department deemed the Petitioner's application complete once all required parts to the application were submitted. (T 277.) However, a complete application is not the equivalent of an application containing information sufficient for approval. The record reflects extensive efforts by the Department to obtain additional information from the Petitioner (Exhibit 4; Exhibit A) even though the Petitioner, as the applicant, is responsible for ensuring that the Department has complete information. (T 166, 272.) If additional, relevant information existed, the Petitioner should have submitted it. The Petitioner instead offered only a limited, selective presentation of information for the PHHPC to make a recommendation.

Although the Petitioner maintains that the CABC's accreditation and reviews should justify elimination of further scrutiny by the Department, that assessment does not comport with applicable law. Instead, it evinces a pattern exhibited by its principal and operator to disregard oversight by legally authorized licensing authorities such as the Department and opt for approval by an entity whose existence is perpetuated by member dues and bestows accreditation upon applicants in exchange for a fee. (T 402-03.) In effect, the Petitioner has sought to create and comply with rules as deemed suitable by the Petitioner. The Department and the PHHPC are tasked with reviewing applicable law, which cannot be altered based upon an applicant's preferences.

For all of these reasons, the Petitioner has failed to establish that the PHHPC's proposed disapproval of its CON application was not correct.

RECOMMENDATION

The PHHPC should not approve the Petitioner's CON application because the Petitioner's principal does not satisfy the Character and Competence Criteria requirement set forth in PHL § 2801-a(3)(b).

The PHHPC should not approve the Petitioner's CON application because there is an open investigation into Fika Midwifery, PLLC by the Education Department's Office of Professional Discipline.

The Petitioner's CON application should not be approved.

DATED: June 3, 2024
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge



Department of Health

KATHY HOCHUL
Governor

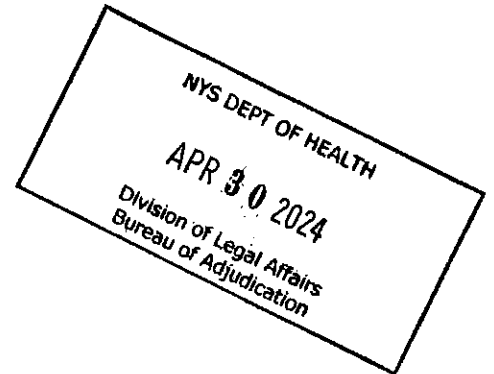
JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

April 29, 2024

By Regular and Overnight Mail

Natalie Bordeaux, Esq.
Chief Administrative Law Judge
Bureau of Adjudication
NYS Department of Health
150 Broadway, Suite 510
Albany, New York 12204



Re: In the Matter of COIT HOUSE, LLC

Dear Judge Bordeaux:

Enclosed please find the Department of Health's Proposed Findings of Fact and Conclusions in the above referenced matter.

Respectfully submitted,

Mark Fleischer, Assistant Counsel
Director, Bureau of Administrative Hearings
NYS Department of Health

Enc.

CC: Frederick B. Cohen, Esq.
Jacob J. Honan, Esq.
1600 Liberty Building
424 Main Street
Buffalo, New York 14202

STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER

OF

THE PROPOSED DISAPPROVAL BY THE PUBLIC HEALTH
AND HEALTH PLANNING COUNCIL OF AN APPLICATION
FOR ESTABLISHMENT AND CONSTRUCTION OF AN
MIDWIFERY BIRTH CENTER

By

COIT HOUSE, LLC.
414 Virginia Street
Buffalo, New York 14201

APPLICATION NO. 202086 B

Petitioner

pursuant to Article 28 of the Public Health Law of the
State of New York and Part 795, Chapter V, Title 10 (Health)
of the Official Compilation of Codes, Rules and Regulations of the
State of New York (NYCRR).

Proposed Findings of Fact and Conclusions

Respectfully submitted by:

Mark Fleischer, Assistant Counsel
New York State Department of Health
Bureau of Administrative Hearings
Corning Tower Room 2412
Empire State Plaza
Albany, New York 12237-0026

April 30, 2024

Preliminary Statement

On February 22, 2023, the Public Health and Health Planning Council (hereinafter “PHHPC”) proposed to disapprove the application (the “Application”) of Coit House, LLC (“Petitioner”) for establishment of a midwife birthing center. The stated basis for PHHPC’s proposed disapproval was Character and Competence and that there was an open investigation into the Petitioner’s private midwifery birthing center by the State Education Department’s Office of Professional Discipline (“OPD”). The Petitioner requested a hearing, pursuant to PHL § 2801-a(2-a) to determine whether its application should not have been recommended for disapproval by PHHPC. The hearing was conducted remotely via Cisco WebEx videoconferencing on March 13, 2024 and March 20, 2024, with Chief Administrative Law Judge Natalie Bordeaux, Esq., presiding.

Applicable Law and Regulation

Public Health Law (hereinafter “PHL”) § 2801-a(3) mandates that PHHPC shall not approve an application for establishment unless it is satisfied as to (1) the public need for the existence of the institution; (2) the character, competence, and standing in the community of the proposed operators; (3) financial feasibility, and; (4) unless it is satisfied as to “such other matters as it shall deem pertinent”.

Evidence at Hearing

The Petitioner presented the following witness:

1. Maura Winkler, the President of Coit House, LLC.

The Petitioner submitted the following exhibits which was received into evidence:

- | | |
|--------|--|
| Ex. A. | Certificate of Need File |
| Ex. B. | Notice of Hearing |
| Ex. C. | Department FOIL Response, dated August 15, 2023 |
| Ex. D. | May 23, 2023, FOIL Request to Erie County and response |

- Ex. E. Department FOIL Response, dated September 25, 2023
- Ex. F. Transcript from January 26, 2023 PHHPC Establishment and Project Review Committee Meeting
- Ex. G. Transcript from February 9, 2023 PHHPC Meeting
- Ex. H. ProPublica Article, dated October 27, 2015
- Ex. I. Recording of January 26, 2023 PHHPC Establishment and Project Review Committee Meeting
- Ex. J. Recording of February 9, 2023 PHHPC Meeting
- Ex. K. New York State Association of Licensed Midwives Comments Regarding Birth Center Regulations, dated November 7, 2018
- Ex. L. Comment from Dr. Bassett and others published in Times Union on July 18, 2023
- Ex. M. Email from George Macko, dated August 19, 2022
- Ex. N. Petitioner's response to Department's comment on disapproval, dated September 30, 2022
- Ex. O. Commission for the Accreditation for Birth Centers ("CABC") Indicators of Compliance with Standards for Birth Centers
- Ex. P. APGAR score opinion document published by American College of Obstetricians and Gynecologists
- Ex. R. Autopsy Report
- Ex. S. CABC Certification

The Department presented the following witness:

1. Shelly Glock, Director for the Department of Health's Center for Health Facility

Planning, Licensure and Finance.

The Department submitted the following exhibits which were received into evidence:

- Ex. 1. Notice of Hearing
- Ex. 2. Letter of Proposed Disapproval, dated February 22, 2023
- Ex. 3. NYSE-CON Application View
- Ex. 4. NYSE-CON Correspondence View
- Ex. 5. Office of Primary Care and Health Systems Management ("OPCHSM") Executive Summary
- Ex. 6. PHHPC Resolution, dated January 26, 2023
- Ex. 7. Transcript from January 26, 2023 PHHPC Establishment and Project Review Committee Meeting
- Ex. 8. Transcript from February 9, 2023 PHHPC Meeting
- Ex. 9. Petitioner's revised Schedule 2 of its Establishment application
- Ex. 10. Petitioner's explanation of statements in its revised Schedule 2
- Ex. 11. Request for Additional Information from Erin Roy
- Ex. 12. Petitioner's Response to Request for Additional Information, dated July 18, 2022
- Ex. 13. Petitioner's response to Department's comment on disapproval, dated

- September 30, 2022
- Ex. 14. Credentialing information submitted by Petitioner, including Settlement Agreement with Kaleida
- Ex. 15. Petitioner's response to Establishment and Project Review Committee with attachments, dated February 6, 2023
- Ex. 16. Public Comment from Katherine Maloney, M.D., Deputy Erie County Medical Examiner, dated September 24, 2020
- Ex. 17. Public Comment from Katherine Maloney, M.D., Deputy Erie County Medical Examiner, dated January 17, 2023
- Ex. 18. Request for Information sent to Petitioner by State Education Department Office of Professional Discipline, dated January 6, 2023
- Ex. 19. Petitioner's response to Dr. Maloney's public comment, dated January 23, 2023
- Ex. 20. Petitioner's response to Dr. Maloney's public comment, dated October 12, 2020

Proposed Findings of Fact

Background

1. Maura Winkler (hereinafter "Petitioner") has been a New York State certified midwife since 2017 (Exh. 14, p. 1; Transcript ["T"] at 290). Petitioner has, since on or about 2017, operated FIKA Midwifery, PLLC, a private Midwifery Birthing Center at 414 Virginia Street, Buffalo, New York (Exh. A, pp., 26, 39, 69, 72, 368; Exh. 14, p. 1).
2. On or about July 20, 2020, Petitioner established Coit House, LLC., for the intended purpose of seeking its establishment as a Midwifery Birthing Center licensed by the Department of Health pursuant to Public Health Law (PHL) 2801-a. (Exh. 5, p. 1; Exh A, pp. 11, 53, 55-64, 69, 74, 154-159).
3. On or about September 10, 2021, Coit House received accreditation from The Commission for the Accreditation of Birth Centers ("CABC"), which, among other things, certifies that birth centers are in compliance with the American Association of Birth Centers ("AABC") standards for birth centers (Exhibit S).

4. On or about August 13, 2020, Petitioner submitted a Certificate of Need application through the Department's NYSE-CON system, a web-based application through which applicants and their representatives communicate with the Department (T at 42-43, 46-47, 82; Exhs. 3 and 4), for the establishment of Coit House, LLC. as a Midwifery Birthing Center, pursuant to Public Health Law (PHL) 2801-a (hereinafter referred to as "CON Application") (Exh. 3). The Department accepted the CON Application on or about October 2, 2020 (T at 55; Exh. 4, p. 9; Exh. A, p. 162).

5. The Department reviewed the CON Application and associated disclosures and, in or around September 2022 determined that it would recommend its disapproval based on Character and Competence (T at 64, 104-105).

6. This determination was based largely on the fact that Petitioner was currently the subject of an investigation by the New York State Department of Education's Office of Professional Discipline (herein after "OPD") (T at 64, 66, 74, 104-105, 149, 282-283).

7. Department representatives, including Shellie Glock, the Director of the Department's Center for Health Planning, Licensure and Finance (T at 32), spoke with the Petitioner and her counsel on or about September 23, 2023 and notified them that the Department would be recommending disapproval of the CON Application based on Character and Competence (Exh. 13; T at 97-98, 136-141, 282). The Department notified the Petitioner that they had the option of withdrawing the application (T at 63, 97-98, 136-141; Exh. A, p. 299), but the Petitioner elected to move forward with the application (Exh. 13; T at 67, 143; Exh. A, p. 299).

8. In or around January 2023, the Department issued a Recommendation that the CON Application be disapproved and placed the matter on the agenda for the January 26, 2023

meeting of the Establishment Project Review Committee ("EPRC") of the Public Health and Health Planning Council ("PHHPC") (Exh. 5; Exh. A, pp. 282-290).

9. The EPRC addressed the CON Application at its January 26, 2023 meeting and heard comments from Department Representatives, the Petitioner and her representatives, and various Committee Members. A motion to disapprove was made and seconded, and a vote on the motion was called. Four members voted in favor of the motion and four members voted against it. (Exh. 7; T at 65.)

10. The CON Application was subsequently placed on the Agenda for the February 6, 2023 meeting of the PHHPC. PHHPC heard comments from Department Representatives, the Petitioner and her representatives, and various Committee Members. A motion to disapprove was made and seconded, and a vote on the motion was called. The motion passed with a substantial majority of the members voting in favor of disapproval. (Exh. 8.)

11. On or about February 23, 2023, PHHPC notified the Petitioner via email and NYSE-CON that it is considering disapproval of the CON Application and that the decision will become final 20 days after receipt of the letter unless a public hearing is requested (Exh. 2). The Notice stated that the PHHPC considered Character and Competence and an active and open investigation by OPD (Exh. 2).

Pending OPD Investigation and related Disclosures

12. Before Petitioner submitted the CON Application in August 2020, she had been notified OPD was investigating FIKA Midwifery, LLC., via letter dated August 9, 2019. This letter requested clinical records for ten patients (Exh. 12, p. 6).

13. Also prior to submission of the CON Application, Petitioner had received a letter from OPD, dated May 11, 2020, describing "tentative charges" against her (Exh. 12, p. 5).

14. The Department became aware that there could be a pending OPD investigation into the applicant through receipt in NYSCOM of a September 24, 2020 public comment from Dr. Katherine Maloney, the Deputy Chief Medical Examiner for Erie County, which stated that there had been two deaths at FIKA Midwifery, LLC. that occurred due to gross negligence (hereinafter referred to as “sentinel events”) and were currently being investigated by OPD (T at 56-57, 62 10I; Exh. 16).

15. Petitioner’s CON Application did not identify the existence of the OPD investigation (Exh. A., pp. 22-38).

16. On or about September 30, 2020, the Department requested that Petitioner submit a new, revised Schedule 2A to the CON Application, which specifically inquired into, among other things, whether the applicant was the subject of any investigations by a licensing body (Exh. 4, p. 9; Exh. 9, p. 10; T at 190). The revised Schedule 2A required that the applicant submit an attachment with all relevant details (Exh. 9, p. 10).

17. On or about June 3, 2022, Petitioner submitted a completed revised Schedule 2A through NYSCOM (Exh. 4, p. 3; Exh. A, p. 228; T at 86-87). In this Schedule (Exh. 9) and an attachment thereto (Exh. 10), Petitioner disclosed that she is the subject of a pending investigation by OPD, that she was notified of the investigation in August 2019, and that she has been cooperating fully with the investigation.

18. The Schedule and Attachment did not provide any “relevant details of the investigation” as required in the revised Schedule 2A, including the fact that Petitioner had been notified of tentative charges against her in May 2020.

19. On or about July 5, 2022, the Department sent the Petitioner a Request for Additional Information (“RFAI”) through NYSCOM, requesting, among other things, additional

details about the OPD investigation (Exh. 4, p. 2; Exh. 11; Exh. A, p. 266).

20. Petitioner submitted a Response to the July 5, 2022 RFAI on July 18, 2022, which provided little additional information about the OPD investigation. The Petitioner's Response mostly downplayed the import of the OPD investigation by asserting, among other things, that the August 9, 2019 OPD letter "contained no allegation of wrongdoing on [her] part" and that her attorney "advised that OPD staff very well may decide that there was no reason for an action or proceeding" (Exh. 12, p. 5). The Response mentions near its end and in passing only that OPD had notified Petitioner of tentative charges in May 2020.

21. The July 18, 2022 RFAI Response included the August 9, 2019 OPD letter as an attachment (Exh. 12, pp. 6-7), but, notably, did not include as an attachment the May 11, 2020 OPD letter describing tentative charges mentioned in the Petitioner's Response.

22. Petitioner also downplayed the significance of the OPD investigation in her October 12, 2020 response to Dr. Maloney's September 24, 2020 public comment opposing the CON Application, asserting:

"[w]hile the Office of Professional Disciplines is investigating these deaths as they would regardless of the provider or facility involved, the midwives have yet to be interviewed and the investigation is not complete. Without knowledge of obstetrical and midwifery standards of care or the facts of the case, it would be impossible for OPD, let alone a medical examiner, to draw conclusions about the provider's role, if any, in the cause of death at this time".

(Exhs. 16 and 20.)

23. Petitioner subsequently made this same exact statement in a January 23, 2023 response to Dr. Maloney's January 17, 2023 opposition letter, even though Petitioner had, prior to that date, recently received a letter from OPD, dated January 6, 2023, that had requested certified copies of documents to be used "as evidence in an administrative hearing pursuant to

NYS Education Law, Section 6510” (Exhs. 18, 19 and 20).

24. Petitioner did not discuss the open OPD investigation in her remarks during the January 26, 2023 EPRC meeting or the February 6, 2023 PHHPC meeting, despite the fact that the issue was discussed throughout the meeting and obviously of significant interest to the Council members (Exh. 7).

25. Petitioner was similarly circumspect about the OPD investigation during this hearing. She testified that she is “not aware of any investigations of [her] own license related to these two stillbirths” (T at 372-375), even though she was aware that OPD had commenced a disciplinary proceeding against FIKA Midwifery and Petitioner personally, alleging professional misconduct, including gross negligence and incompetence, and that the proceeding against her could potentially preclude her from operating a midwifery birthing center (T at 394-397).

Other Incomplete or Inadequate Disclosures

26. The Department’s July 5, 2022 RFAI also requested information relating to the Petitioner’s response to the sentinel events, including whether and how policies and practices were changed in response to the events, as well as information regarding the Petitioner’s Continuous Quality Improvement (“CQI”) Program (Exh. 11).

27. Implicit – if not explicit – in these requests was an expectation that the Petitioner would provide any information relating to any root cause analysis (“RCA”) of the sentinel events that might have been conducted (T at 163-165, 171, 271-272).

28. In fact, CABC’s published standards -- which Petitioner professed to follow -- require that “there is an effective quality improvement program that utilizes root cause analysis in order to identify issues, develop corrective action plans and monitor quality improvement” (Exh. O, p. 194).

29. The Petitioner, however, did not provide the Department with a root cause analyses nor did it describe such an analysis in the Response to the RFAI, even though Petitioner claimed during a January 26, 2023 EPCR meeting that she “did do a RCA” and she would have provided it to the Department had it been so requested, and that CABC had conducted sentinel event review during the accreditation process (Exh. 7, p. 14; Exh. 12; T at 272).

30. The Petitioner’s July 18, 2022 RFAI Response included few details regarding changes made as a result of the sentinel events, as requested by the Department, and did not provide any of the actual policies that would indicate what was changed after the sentinel events. Petitioner instead provided a narrative that mostly asserted that certain policies that were relevant to the sentinel events were reviewed or updated (Exh. 12, pp. 11-12; T at 179-180).

31. For example:

- i. the RFAI Response asserts that the policy for addressing client refusal when the need for transfer is indicated was reviewed but does not state what the result of the review was and whether or how the policy was changed (Exh. 12, pp. 11-12);
- ii. the RFAI Response asserts that the policy for accepting patients who had previously given birth through Caesarian section (“TOLAC”) was, after a temporary pause of admissions, revised to “clarify threshold for acceptance into the practice and outline indications for transfer during TOLAC”. The Response, however, does not identify or describe the threshold for acceptance or the indications of transfer, nor does it explain how they were clarified or revised (Exh. 12, pp. 11-12);
- iii. the RFAI Response asserts that the policy for Group B Strep was updated to clarify indications for prophylaxis and indications for transfer, and management of prolonged

rupture of membranes. The Response, however, does not describe the classifications or describe either the prior or new “indications”, or the prior or new policy regarding management of prolonged ruptured membranes (Exh. 12, pp. 11-12); and

iv. the RFAI Response asserts that “various policies emphasize the importance of evaluating risk factors on an ongoing basis and collectively as opposed to independently. The Response, however, does not identify these policies, or explain how, if at all, they were changed after and/or in response to the sentinel events (Exh. 12, pp. 11-12).

32. The lack of information about policy changes contained in the RFAI Response is notable given Petitioner’s statements at the January 16, 2023 EPRC meeting that Petitioner had “changed many of [her] policies including policies about Group B Strep, antibiotics and labor, and policies for when transfers was indicated for long labors as well as many others” (Exh. 7, p. 14).

33. The Department’s July 5, 2022 RFAI also inquired into why Petitioner had not initiated CQI until 2020 (Exh. 11.) CQI is defined by the National Learning Consortium (referenced in the definition section of Petitioner’s Exh. O, p. 204) as a quality management process that “uses a structured planning approach to evaluate the current practice processes and improve systems and processes to achieve the desired outcome and vision for the desired future state.” Petitioner responded that CQI “was a policy from the beginning”, however, Petitioner’s identification of “CQI activities prior to May 2020” does not demonstrate a structured planning approach to evaluate the current practice processes and improve systems and processes (T at 158-160).

34. Rather, the Petitioner identified a few isolated activities without even attempting to show and/or identify how such activities are part of a structured process, who participate in the

process; and how the process is used to improve processes or systems. Further, the Petitioner identified as one of the purported pre-May 2020 CQI activities, “participation in monthly quality assurance meetings at Oishei Children’s Hospital” (Exh. 12, p. 10), even though the Petitioner’s privileges at Oishei had been suspended as of September 26, 2018 (Exh. 14, p. 5; T at 404).

35. The Department’s July 5, 2022 RFAI also requested the “resuscitative training received by center staff. The RFAI Response, however, consisted only of a narrative identifying by name the individual providing the training, the name of the training curriculum, a very general statement of what is covered in the training, and that all staff are trained on a biannual basis (Exh. 12, p. 12).

36. An earlier RFAI sent to Petitioner on June 3, 2022 requested a list of current and previous hospital affiliations of Petitioner, CNM., including “dates of affiliation, title, circumstances of departure, and any information that would appear in the credentialing file of Petitioner, CNM” (Exh. 4, p. 2; Exh. A, p. 255).

37. Petitioner responded to this particular request on June 17, 2022 with a narrative that explained, among other things, that Petitioner had an affiliation with an obstetrician-gynecologist who operated a birthing center and a reproductive health clinic, which led to Petitioner obtaining credentialing privileges at Oishei Children’s Hospital (“Oishei”), but that she became concerned for her privileges because (1) the physician did not cover for her or mentor her as planned; and (2) she was dissatisfied with the quality of services her patients received at Oishei. The narrative states further that she resigned her privileges through a settlement agreement in February 2019. (Exh. 14, pp. 1-2 Exh. A, p. 255-257, 260-263.)

38. This response and explanation did not address the settlement agreement which is contained in the second attachment to the narrative (Exh. 14, pp. 5-8), and which establishes that

on November 26, 2018 Kaleida Health System, which includes Oishei, had imposed a precautionary suspension of Petitioner's privileges and issued her a notice of recommendation to revoke her appointment to the medical staff and her privilege, and that Petitioner settled the matter by agreeing to resign her appointment and relinquish her privileges, not apply for appointment to staff for at least two years, and to not perform any midwife services at any Kaleida facility. The agreement further provided that Kaleida Health would not report Petitioner to the National Practitioner Data Bank, the Office of Professional Discipline, Department of Education, the Center for Medicare and Medicaid ("CMS") or any subdivision thereof, or any other privileging or credentialing body, relating to professional competence or conduct through the date of September 26, 2018.

39. The Department's July 5, 2022 RFAI specifically inquired into the matters that Kaleida had agreed to not report to any regulatory agencies or credentialing bodies (Exh. 11). Petitioner, instead of identifying the issues that would relate to this provision of the Settlement Agreement, which obviously was the information sought by the Department, provided only the cursory response that "there were no facts or circumstances that would justify such a report" (Exh. 12, p. 12).

Proposed Conclusion

There is Substantial Evidence to Support the PHHPC's Proposed Disapproval

The Testimony of Shelly Glock, the Director of the Department's Center for Health Planning, Licensure and Finance (T at 32), and the documents submitted as Exhibits in this hearing constitute "substantial evidence" that PHHPC's proposed disapproval of Petitioner's CON Application was reasonable and appropriate. PHL § 2801-a(3) precludes PHHPC from approving an application if it is not satisfied as to, among other things, "the character,

competence, and standing in the community of the proposed operators”, and to “such other matters as it shall deem pertinent”.

Ms. Glock testified credibly that the Department cannot make an affirmative finding that an applicant meets the character and competence requirements when there is an open investigation into these matters (T at 75-76, 282-283). It is undisputed that the Petitioner has been under investigation by her licensing agency, OPD, since 2019 (Exh. 12, p. 5); that this investigation relates at least in part to the 2019 and 2020 sentinel events (Exhs. 16 and 17); that the investigation led to OPD notifying the Petitioner of tentative charges in May 2020 (Exh. 12, p. 5); and that weeks prior to the PHHPC vote on the CON Application OPD requested documents to be used as evidence in a disciplinary hearing (Exh. 18). Ms. Glock testified that the inability to predict the outcome of the investigation, and the fact that the investigation could lead to the revocation of the license the Petitioner requires to operate a facility are significant factors that prevent the Department from finding that the Petitioner meets the character and competence requirements (T at 104-105, 282-283). She explained further that, under the circumstances, disapproval on character and competence grounds is necessary because the Department has a duty to ensure the quality and safety of health services to the public (T at 50, 106). Various EPRC members voiced their agreement with this position during the January 26, 2023 EPRC meeting (Exh. 7, pp. 6, 10-12, 17-18, 21).

The Petitioner, throughout the application and application review process, further hindered the ability of the Department and the PHHPC to find that the Petitioner meets the character and competence requirements under PHL § 2801-a(3) by being consistently circumspect about the OPD investigation. Indeed, it is undisputed that Petitioner, in response to a request in Schedule 2A for details about any open investigation (Exh. 9, p. 10) stated only that

“[she] was notified of the investigation in August 2019” and “[has] been cooperating fully with the investigation with the assistance of counsel” (Exh. 10). In Response to an RFAI requesting additional details of the OPD investigation (Exh. 11, p. 1), Petitioner noted only that the August 9, 2019 OPD letter “contained no allegation of wrongdoing”, that she was cooperating with the investigation, that her attorney advised her that OPD may decide there is not reason for an action or proceeding, and that she had not received any notice suggesting she could be charged with wrongdoing until May 2020 when she received a letter describing tentative charges (Exh. 12, p. 5). Petitioner did not, throughout the entire application process, describe or produce a copy of this letter. Also, during the EPRC meeting, Petitioner made a lengthy statement that did not address the OPD investigation at all even though it was a central issue of discussion by the Department and Committee members (Exh. 7, pp. 14-15), and her counsel tried to downplay the investigation by noting only that it had been pending for some time and could continue to pend or be “dropped by the wayside” (Exh. 7, p. 8). Petitioner’s February 6, 2023 letter responding to the January 26, 2023 EPRC meeting provides no details about the investigation and merely complains about the Department’s characterization of the Petitioner’s disclosures on this issue (Exh. 15, p. 3). Finally, the Petitioner’s October 12, 2020 and January 23, 2023 responses to the letters from the Erie County Deputy Chief Medical Examiner suggests that OPD’s investigation is of little import:

“[w]hile [OPD] is investigating these deaths as they would regardless of provider or facility involved”, the midwives have yet to be interviewed and the investigation is not complete. Without knowledge of obstetrical and midwifery standards of care or the facts of the case, it would be impossible for OPD, let alone a medical examiner, to draw conclusions about the provider’s role, if any, in the cause of death at this time”.

(Exhs. 19 and 20).

The dearth of information from Petitioner about the OPD investigation, and statements downplaying its significance are incompatible with the undisputed fact that the Petitioner had, by the time she made these statements, received an OPD letter describing charges against her (Exh. 12, p. 5) and had received a letter from OPD, dated January 6, 2023, requesting certified copies of documents to be used “as evidence in an administrative hearing pursuant to NYS Education Law, Section 6510” (Exh. 18).

The Petitioner’s reluctance to be open and forthcoming about the OPD investigation was also evident in this hearing. Petitioner was asked by her counsel to “explain the investigations of which [she is] aware” (T at 372). In response, Petitioner testified that she had not heard anything about the investigation for a long time after first being made aware of it; that OPD had requested medical records for a number of patients; that she was not aware the investigation “was even occurring” when she submitted her CON Application; that in May 2021 she received some communication indicating OPD was considering charges; and that she is not aware of “any investigations into [her] own license relating to these two stillbirths” (T at 372-375). Notably absent from this narrative was the fact that the Petitioner had, in fact, been personally charged by OPD (T at 394, 396). When confronted with this fact, the Petitioner continued to evade:

Q. And you are aware that the SED is currently taking action against – seeking a remedy against your license, correct?

A. No, they have not proposed any disciplinary action. Charges have to be proven or disproven at a hearing.

(T at 394, 396-397).

The Petitioner was also less than transparent about the sentinel events that occurred at her birth center in 2019 and 2020. The Department was made aware by Katherine Maloney, M.D.,

the Erie County Deputy Chief Medical Examiner, that there were two deaths at the center that Dr. Maloney believed were caused by gross negligence, and sought information relating to these events (Exhs. 16 and 17; T at 56-57, 62, 101). The Petitioner, however, provided scant information related to these events and instead continuously deflected any and all responsibility for these deaths by repeatedly asserting that she was on maternity leave when these deaths occurred (Exh. 7, pp. 8, 14; Exh. 10; Exh. 12, p. 3; Exh. 13, p. 2; Exh. 15, pp. 2, 7; Exh. 19, p. 1; Exh. 20, p. 1). In fact, the director of a birth center obviously bears some responsibility for events at the center – positive or negative – as the director is responsible for developing and implementing policies, and hiring and training staff (Exh. 7, pp. 18, 21; Exh. 8, p. 5; Exh. A, p. 24). Moreover, the Petitioner undermined her efforts to evade responsibility on the basis of being away from the practice on maternity leave when she stated at the EPRC meeting:

“I had it set up such that the midwives, even if my phone was silenced, they were on a setting that they could get through to me at any time. When I was out of the country same thing. They were aware that they could get a hold of me if they needed me. We had also talked extensively about what the plan was for them to cover the call and the clinic hours”

(Exh. 7, p. 11). This statement suggests that the Petitioner might well have been contacted during the sentinel events and might have provided instructions or guidance that contributed to the poor outcomes.

More significantly, the Petitioner failed to provide requested information relating to her response to the sentinel events. The Petitioner provided little to no information that would actually show how policies were changed after these deaths despite Department requests for such information (Exh. 11), and instead provided a mostly general narrative explaining primarily that policies were reviewed or updated (Exh. 12, pp. 11-12; T at 179-180)). She never provided the actual revisions to the policies (Exh. 12), nor did she provide a root cause analysis into the

events, which was impliedly if not explicitly requested in the Department's RFAI (Exh. 11; T at 163-165, 171, 272; Exh. O, p. 194). Similarly, in response to questions regarding when and how the Petitioner performs CQI, Petitioner identified "CQI activities prior to May 2020" that do not, in fact, demonstrate a structured planning approach to evaluate the current practice processes and improve systems and processes (T at 158-160), which are essential components of CQI (Exh. O, p. 204). That the Petitioner identified as one of the purported pre-May 2020 CQI activities, "participation in monthly quality assurance meetings at Oishei Children's Hospital" (Exh. 12, p. 10), even though the Petitioner's privileges at Oishei had been suspended as of September 26, 2018 (Exh. 14, p. 5; T at 404), further underscores the Petitioner's lack of transparency in this area.

Credentialing is another area where the Petitioner was not completely forthcoming. In response to the Department's request for information relating to the Petitioner's current and previous hospital affiliations (Exh. 4, p. 2; Exh. A, p. 255), the Petitioner provided a narrative that explained, among other things, that she had an affiliation with an obstetrician-gynecologist who operated a birthing center and a reproductive health clinic, which led to Petitioner obtaining credentialing privileges at Oishei Children's Hospital ("Oishei"). It goes on to state that Petitioner became concerned for her privileges because: (1) the physician did not cover for her or mentor her as planned; and (2) she was dissatisfied with the quality of services her patient's received at Oishei. Petitioner states further that she resigned her privileges through a settlement agreement in February 2019. (Exh. 14, pp. 1-2 Exh. A, p. 255-257, 260-263.)

Obscured from this narrative is the act that the referenced settlement agreement which is contained in the second attachment to the narrative (Exh. 14, pp. 5-8), establishes that on November 26, 2018 Kaleida Health System, which includes Oishei, had imposed a precautionary

suspension of Petitioner's privileges and issued her a notice of recommendation to revoke her appointment to the medical staff and her privileges, and that Petitioner settled the matter by agreeing to resign her appointment and relinquish her privileges, not apply for appointment to staff for at least two years, and to not perform any midwife services at any Kaleida facility. The agreement further provided that Kaleida Health would not report Petitioner to the National Practitioner Data Bank, the Office of Professional Discipline, Department of Education, the Center for Medicare and Medicaid ("CMS") or any subdivision thereof, or any other privileging or credentialing body, relating to professional competence or conduct through the date of September 26, 2018. Clearly, the Petitioner's narrative regarding her credentialing was inconsistent with the terms of this settlement agreement. Furthermore, Petitioner's response to the Department's request for information relating to the matter addressed through the Kaleida agreement (Exh. 11, p. 2), that "there were no facts or circumstances that would justify [any report to the National Practitioner Data Bank, OPD or CMS]" (Exh. 12, p. 12) was also substantively non-responsive.

Based on the forgoing, there is substantial evidence that supports the PHHPC's disapproval of the CON Application based on both character and competence and on other pertinent matters, in that the open OPD investigation of the Petitioner, which could potentially lead to revocation of the license required to operate an Article 28 established birth center, makes it impossible for PHHPC to conclude whether the Petitioner meets the required criteria set forth in PHL § 2801-a(3). Although, this open OPD investigation – in and of itself – justifies disapproval, the Petitioner's failure throughout the CON Application process to be forthcoming with information relating to, among other things, the OPD investigation, the sentinel events and reaction to those events, and the Petitioner's credentialing history further hinder the

Department's and the PHHPC's ability to make an affirmative finding regarding the Petitioner's character and competence.

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of

THE PROPOSED DISAPPROVAL BY THE PUBLIC HEALTH
AND HEALTH PLANNING COUNCIL OF AN APPLICATION
FOR ESTABLISHMENT AND CONSTRUCTION OF A
MIDWIFERY BIRTH CENTER

By

THE COIT HOUSE, LLC
414 Virginia Street
Buffalo, New York 14201

APPLICATION NO. 202086 B

Petitioner

Pursuant to Article 28 of the Public Health Law of the
State of New York and Part 795, Chapter V, Title 10 (Health)
Of the Official Compilation of Codes, Rules and Regulations of the
State of New York (NYCRR).

EXCEPTIONS TO HEARING OFFICER'S REPORT

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TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
EXCEPTIONS.....	3
CONCLUSION.....	11

PRELIMINARY STATEMENT

Petitioner, The Coit House, LLC, Fika Midwifery PLLC (“Fika”), and Maura Winkler, CNM (“Winkler”) (collectively, “Coit House” or “Petitioner”), by and through its counsel, Rupp Pfalzgraf LLC, submits these exceptions to the Report and Recommendation issued by Administrative Law Judge Natalie J. Bordeaux (“Judge Bordeaux”) on June 3, 2024 (the “Report and Recommendation”).¹ The Report and Recommendation was issued following the hearing held on March 13, 2024 and March 20, 2024 (the “Hearing”) to contest the validity of the Public Health and Health Planning Council’s (“PHHPC”) proposed disapproval of Certificate of Need application 202086, The Coit House (“CON”).

In short, the Report and Recommendation found that PHHPC should not approve the CON because (1) Petitioner’s character does not satisfy the Character and Competence Criteria requirement set forth in PHL § 2801-a(3)(b), and (2) because there is an open investigation into Fika by the New York State Education Department’s Office of Professional Discipline (“OPD”). For the reasons set forth herein, Judge Bordeaux’s Report and Recommendation is contrary to the evidence presented during the Hearing, incorrect, and otherwise prejudicial to Petitioner’s rights.

Accordingly, Petitioner reiterates its position that PHHPC’s proposed decision to disapprove the CON must be set aside. Further, Petitioner reiterates its requests that DOH (1) be directed to revise its Executive Summary issued on January 9, 2023 (the “Executive Summary”) and the testimony of DOH staff at the Establishment and Project Review Committee (“EPRC”)

¹ A courtesy copy of the Report and Recommendation is provided herein. Although the Report and Recommendation is dated June 3, 2024, a copy of the Report and Recommendation inexplicably was not provided to Petitioner until July 11, 2024 when the undersigned contacted Judge Bordeaux to ask if the Report and Recommendation had been issued. Judge Bordeaux’s failure to timely provide a copy of the Report and Recommendation to Petitioner violated 10 N.Y.C.R.R. § 51.12, which required her to “submit [the report] to the commissioner or to the appropriate board or council, and to all parties.” *See* 10 N.Y.C.R.R. § 51.12 (2024).

meeting on January 26, 2023 and at the PHHPC meeting on February 9, 2023 so that only accurate and only relevant facts about Petitioner are presented to EPRC and PHHPC, (2) retract its recommendation to disapprove the CON, (3) acknowledge and retract misstatements concerning the existence and the application of laws, regulations, and DOH policies testified to, and (4) after such revisions are made, remand the CON to PHHPC for further consideration in accordance with its authority to grant a midwifery birth center license to Petitioner.

Judge Bordeaux's Report and Recommendation represents the latest in a series of violations of Petitioner's right to obtain a fair outcome with respect to the CON. DOH's conduct throughout the CON and Hearing process illustrates its prejudice against out-of-hospital births and anyone who promotes the same—as illustrated by the fact that there are no DOH-licensed midwifery birthing centers in New York. Petitioner has vigorously pursued the CON to establish a pathway for Petitioner and other birthing centers across the State to obtain licensure. However, DOH has resisted Petitioner's efforts through politically-motivated due process violations and arbitrary and capricious conduct.

These exceptions are submitted pursuant to 10 N.Y.C.R.R. 51.13. Petitioner remains ready and willing to provide any further information that may assist PHHPC with its ultimate decision regarding the CON. PHHPC is encouraged to take a close look at the evidence that was presented during the Hearing (i.e., Petitioner's exhibits A through S and the Hearing transcript).² Petitioner also requests that PHHPC review Petitioner's comprehensive post-hearing submission, as the Report and Recommendation failed to address or even reference many critical

² Courtesy copies of Petitioner's Hearing exhibits A through S, and Petitioner's post-hearing submission with exhibits 1-3 are provided herein for PHHPC's consideration. All references to exhibits herein refer to Petitioner's hearing exhibits A-S and Petitioner's post-hearing submission exhibits 1-3.

points raised therein. Petitioner requests that PHHPC issue its final determination with respect to the CON in a timely manner, so that Petitioner can pursue further legal action, if necessary.

EXCEPTIONS

- A. The Report And Recommendation's Incorrectly States That Petitioner Failed To Satisfy The Character And Competence Criteria Despite That No Negative Evidence Regarding Petitioner's Character And Competence Was Introduced During The Hearing.

The basis for Judge Bordeaux's finding that Petitioner (i.e., Winkler) lacks the character and competence necessary to run a licensed birthing center is unclear. Indeed, no legitimate evidence was introduced during the Hearing that reflects adversely on Winkler's character and competence to run a licensed birthing center. In fact, during the Hearing, DOH's sole witness, Shelly Glock, admitted that Winkler's personal character and competence was not the reason that DOH recommended disapproval. *See* Exhibit 1 at p. 190:15-18, 201:17-202:11. At the Hearing, Winkler rebutted all allegations against her character and competence as a midwife by showing her expertise, attention to detail, and recollection of events, though the Report and Recommendation makes no mention of these facts. *See* Exhibit 2 at p. 290-92, 357.

The Report and Recommendation's negative finding regarding Winkler's character appears to be based on her alleged failure to disclose relevant information: "Ms. Winkler's unwillingness to divulge important and relevant information regarding the basis upon which the PHHPC proposed to disapprove her CON application, even during the hearing, is disconcerting." *See* Report and Recommendation at p. 8. The Report and Recommendation's statements regarding information that Winkler allegedly failed to divulge are inaccurate. For example, the Report and Recommendation states that Winkler failed to provide root cause analysis regarding the two infant stillbirths, despite that DOH never has requested root cause analysis related to the two infant

demises, and despite that Winkler has offered to provide root cause analysis related to those two infant demises up to the present day. The Report and Recommendation also states that Petitioner failed to provide information regarding Petitioner's continuous quality improvement ("CQI") initiative, despite that Petitioner provided this information on numerous occasions. *See* Report and Recommendation at p. 10; *see* Exhibit A at p. 284, 324-26.

Thus, Judge Bordeaux's adverse finding regarding Petitioner's character and competence based on Petitioner's purported failure to be transparent with the DOH is contrary to the applicable evidence.

B. Report And Recommendation Incorrectly States
Options Provided To Petitioner By DOH Regarding The CON.

The Report and Recommendation states that, in September of 2022, Petitioner was given the option to "withdraw her CON application until OPD concluded its investigation." *See* Report and Recommendation at p. 6. Petitioner was never provided this option by DOH. As Winkler testified during the hearing, during a phone call in September of 2022, DOH provided Petitioner with three options regarding how Petitioner could proceed with the CON in light of the DOH's proposed recommended disapproval: (1) withdraw the CON, (2) amend the CON to list a new proposed director (other than Winkler) of the birthing center, or (3) move forward with DOH's recommended disapproval. *See* Exhibit 2 at p. 377:20-379:19. Needless to say, Petitioner chose the third option. Judge Bordeaux's conclusion that Petitioner was provided with an option that was never offered is inexplicable, and represents one of many instances where Judge Bordeaux unfairly discredited Petitioner's testimony.³

³ During the EPRC meeting regarding the CON in January of 2023, Mr. Peter Robinson of the DOH testified that Petitioner did not have the option of delaying a decision on the CON pending a resolution of

C. Report And Recommendation Incorrectly States That
Petitioner Was Afforded The Opportunity To Testify Before PHHPC.

The Report and Recommendation states that PHHPC “hear[d] from Ms. Winkler” during the February of 2023 PHHPC meeting where the CON was discussed. *See* Report and Recommendation at p. 6. Petitioner was not given the opportunity to testify during the PHHPC meeting, as reflected in the transcript of that meeting, though Petitioner would have gladly testified if given the opportunity. *See* Exhibit G. Judge Bordeaux’s statement that Winkler testified at the PHHPC meeting was pulled out of thin air and is contrary to the record.

D. Report And Recommendation’s Incorrect Reliance
On And Conclusions Regarding The Ongoing OPD Investigation.

The Report And Recommendation’s finding that PHHPC should not approve the CON due to the ongoing OPD investigation is flawed for two fundamental reasons. First, DOH has not promulgated any policy or practice that allows DOH to recommend disapproval of a CON when there is an ongoing investigation into the application. Second, the Report and Recommendation’s finding in this regard takes a ‘presumed guilty until proven innocent’ approach that violates Petitioner’s due process rights.⁴ The OPD investigation referenced in the Report and Recommendation is ongoing, no charges have been proven, Petitioner hotly contests any culpable

the OPD investigation. *See* Exhibit F at p. 6. Judge Bordeaux makes no mention of this fact that flatly contradicts her finding in the Report and Recommendation.

⁴ The Report and Recommendation incorrectly shifts the burden on Petitioner to obtain dismissal of all OPD charges before the CON can be approved: “An investigation into the applicant’s principal and her practice precludes a favorable recommendation because the Department is unable to ascertain the investigation’s outcome, which may include negative findings regarding quality of care and safety.” *See* Report and Recommendation at p. 7 (emphasis added). To date, the OPD investigation has not resulted in any adverse findings against Petitioner.

conduct, and neither Judge Bordeaux nor the DOH are privy to any of the happenings in the OPD proceeding.

Petitioner's post-hearing submission addresses at length why DOH's recommended disapproval of the CON due to the ongoing OPD investigation was contrary to applicable law. Specifically, (1) Marthe Ngwashi, Esq. openly stated at the February 9, 2023 PHPPC meeting that the CON was not given a favorable recommendation due to DOH "policy" not to recommend approval of a CON submitted by an entity under investigation; (2) DOH has not promulgated a written policy to this effect; and (3) any such "policy" is required to be in writing to be effective. Judge Bordeaux did not meaningfully address Petitioner's arguments regarding this point. Nor did Judge Bordeaux address DOH's failure to inform Petitioner of this alleged "policy" until multiple years had passed after the CON was submitted and DOH first learned of the pending OPD investigations. The Report and Recommendation conveniently ignores the numerous problems posed by DOH's reliance on a non-existent policy in violation of applicable administrative law.⁵

The Report and Recommendation's finding that the open OPD investigation implicates Petitioner is equally troubling and illustrates Judge Bordeaux's lack of understanding

⁵ The Report and Recommendation cavalierly states: "Regardless of the choice of words adopted by the Department's attorney addressing the PHHPC [regarding the alleged policy], it was and remains the PHHPC's decision whether to approve the Petitioner's CON application." *See* Report and Recommendation at p. 7. However, the PHHPC transcript does not reflect that PHHPC was afforded this discretion in making their decision, as the PHHPC was instructed by Marthe Ngwashi, Esq., DOH counsel, that PHHPC had no discretion to approve the CON:

...whenever there is an investigation that we are alerted to either by a licensing entity or a District Attorneys' Office, the Attorney General's Office, any law enforcement agency. We [the DOH] do not move applications forward with a favorable recommendation because we are not able to make a recommendation based on a pending outcome where there has been no resolution. That is the case for an application we have brought forward in the past. This is a policy of the Department [of Health] we are not intending to change. *See* Exhibit G.

of the OPD hearing process. As argued in Petitioner’s post-hearing submission, OPD investigations can drag on for many months and years without the Respondent being provided with information regarding the proceeding or the underlying charges. Here, Petitioner’s OPD hearing currently is ongoing and is expected to continue well into 2025—over five years after the CON was first submitted. OPD proceedings are private and the status and result of OPD investigations are often shielded from public view. Thus, Judge Bordeaux’s statement that “concerns [were] raised by the OPD investigation” is puzzling and troubling, as this statement suggests that DOH may be privy to aspects of the OPD investigation.⁶ The pending OPD proceeding is not before PHHPC and has no relevance to this matter.⁷

Additionally, the Report and Recommendation states that “The PHHPC determination [to recommend disapproval of the CON] is clearly based primarily upon the OPD investigation, not Dr. Maloney’s report.” *See* Report and Recommendation at p. 5. It is unclear how Judge Bordeaux could have reached this conclusion, since she was not present at the February of 2023 PHHPC meeting where the CON was discussed, she has not had any conversations with

⁶ Petitioner has submitted FOIL requests seeking communications between DOH and OPD about Petitioner; however, to date, no meaningful response to those FOIL requests has been provided. Petitioner has commenced an Article 78 proceeding in New York State Supreme Court to seek relief for the constructive denials of the FOIL requests. Judge Bordeaux inexplicably precluded Petitioner from asking the DOH’s witness regarding communications between DOH and OPD about Petitioner; one of many relevant areas of questioning that Judge Bordeaux did not allow Petitioner to explore. *See* Exhibit 1 at p. 120:12-122:18.

⁷ The Report and Recommendation improperly credits some of the charges that have been asserted against Petitioner as true, stating that Petitioner does not appreciate “the gravity of the risks posed by approving an application for a midwifery practice that has failed to demonstrate an understanding of the dire consequences of ignoring the conditions of individual patients and not transferring patients to a hospital when the need arises.” This off-the-cuff and prejudicial statement is included in the Report and Recommendation despite that none of the charges asserted against Petitioner have been proven, there was no testimony regarding these OPD charges during the Hearing, and (as noted elsewhere in these exceptions) the OPD proceeding has no bearing on the CON.

PHHPC members regarding the CON, and the transcript of the February 2023 PHHPC meeting contains numerous references to Dr. Maloney's letter. *See* Exhibit G.

E. Report And Recommendation's Incorrect Statement That Petitioner Should Have Supplied More Information Regarding OPD Investigation.

The Report and Recommendation states in numerous places that Petitioner should have provided further information regarding the ongoing OPD investigation. This suggestion represents a fundamental misunderstanding of the OPD investigation process. OPD investigations are confidential, and the respondent is not kept informed regarding the content or progress of the investigation. It is inappropriate for Judge Bordeaux to have made a negative inference against Petitioner based on her own misunderstanding of what is revealed to the respondent (here, Petitioner) in an OPD investigation. It is not that Petitioner "lack[ed] candor" regarding the OPD proceeding; rather, Petitioner simply does not believe that OPD has or will have any evidence that Petitioner acted in a culpable manner.

Notably, Judge Bordeaux makes no mention of the fact that the Hearing transcript and the Hearing exhibits establish that (1) there were no ongoing investigations of Winkler at the time the CON was submitted, (2) the CON application in 2020 did not include any questions that asked about ongoing investigations, (3) Petitioner acknowledged the OPD investigation of two midwives who were employees of Fika in October of 2020, and (4) Petitioner provided DOH with extensive information regarding the two infant stillbirths upon request. Judge Bordeaux's adverse credibility determinations regarding Petitioner's handling of the CON are not based in reality, especially given her refusal to acknowledge Petitioner's arguments that contradict DOH's position.

F. Report And Recommendation's Reference To Civil Lawsuits Involving Petitioner Is Irrelevant And Improper.

The Report and Recommendation includes references to two pending civil lawsuits that have been filed against Petitioner in New York State Supreme Court, and Judge Bordeaux used the existence of these lawsuits to justify her recommended disapproval of the CON. This is erroneous because, as any healthcare provider knows, allegations of negligence (whether brought in a lawsuit or otherwise) are not indicative of a practitioner's culpability.⁸ Frivolous civil lawsuits are filed against healthcare professionals on a daily basis. Neither of the two civil lawsuits referenced by Judge Bordeaux have resulted in a verdict against Petitioner. To the contrary, both of these civil lawsuits have been resolved without any adverse finding against Petitioner. For Judge Bordeaux to take allegations in separate civil lawsuits as fact and use those allegations as a basis to recommend denial of the CON was improper.

G. Report And Recommendation Incorrectly Concluded That Petitioner Failed To Disclose Various Categories Of Documents Requested By DOH.

Judge Bordeaux repeatedly credited DOH's incorrect position that Petitioner failed to provide all categories of documents requested by DOH. In reality, Petitioner provided hundreds of pages of documents to DOH during the CON process, Petitioner timely responded to DOH's demands for documents and information, and Petitioner remains willing to this day to provide any further documents or information that PHHPC deems necessary to issue an informed decision regarding the CON. During the Hearing, Judge Bordeaux precluded Petitioner's counsel from

⁸ Dr. John D. Bennett aptly made this point during the January 2023 EPRC meeting by testifying that an investigation or malpractice lawsuit is not automatically evidence of malpractice or misconduct. See Exhibit F at p. 10, 15-16.

cross examining the DOH's witness, Shelly Glock, regarding the DOH's incorrect assertions that Petitioner failed to provide complete responses to DOH's document and information requests.

Despite her preclusion of this questioning, Judge Bordeaux's Report and Recommendation blames Petitioner for failing to provide these documents. *See, e.g.*, Report and Recommendation at p. 15.⁹ PHHPC is urged to recognize this inconsistency. Petitioner provided all documents required during the CON process, promptly responded to the DOH's requests for additional documents, and remains willing to this day to provide any further materials that PHHPC believes are missing. *See* Exhibit 2 at p. 266:22-267:4, 329:18-331:18, 336:19-337:8, 338:3-15, 339:8-340:5, 349:18-351:2, 352:13-354:8; Exhibit A at p. 266-279. Judge Bordeaux's assignment of blame on Petitioner for failure to provide adequate documentation to DOH is a miss, especially given that she precluded Petitioner from exploring this topic during the Hearing.

H. Report And Recommendation's Reference To
Petitioner's Settlement Agreement With Kaleida Is Irrelevant.

Judge Bordeaux's decision apparently is based in part on a settlement agreement that Winkler executed with Kaleida Health prior to the submission of the CON. The Report and Recommendation incorrectly states that Kaleida "terminate[d]" Winkler's privileges with Kaleida. That never occurred—as Winkler testified during the Hearing, she resigned her privileges with Kaleida as part of her agreement with Kaleida. Even if Judge Bordeaux had correctly articulated the circumstances surrounding that settlement agreement, Winkler's agreement with Kaleida is irrelevant to a decision on the CON. The Report and Recommendation wildly speculates that Petitioner's lack of relationship with Kaleida could "hamper a hospital transfer," despite that no

⁹ This assignment of blame on Petitioner for failing to provide documents and information violates DOH's stated goal of working collaboratively with applicants until all information needed to evaluate a CON is submitted. *See* Exhibit A at p. 4-5; Exhibit 1 at p. 123:4-10.

testimony to this effect was introduced during the Hearing. *See* Report and Recommendation at p. 13.

I. Report And Recommendation Makes No Mention
Of The Bias That Petitioner Faced During The Hearing.

Petitioner's post-hearing submission details numerous occurrences during the Hearing where Judge Bordeaux's bias in favor of DOH was open and obvious. This clear bias prevented Petitioner from obtaining a fair shake during the Hearing. Surprisingly, the Report and Recommendation does not rebut Petitioner's allegations of bias, nor does the Report and Recommendation explain several of the inconsistent rulings issued by Judge Bordeaux during the Hearing. Nor does the Report and Recommendation reference numerous relevant points raised by Petitioner during the Hearing and in Petitioner's post-hearing submission, including that DOH presented an Executive Summary to PHHPC and EPRC that contained many factual inaccuracies.¹⁰ Judge Bordeaux's silence on these points is telling.

CONCLUSION

For these reasons, the Report and Recommendation contains numerous inaccuracies, prejudicial statements, and inappropriate credibility determinations against Petitioner. Accordingly, PHHPC is urged not to rely on the Report and Recommendation in making its final decision regarding the CON, and PHHPC is urged to review the Hearing transcript and record for its own edification. Petitioner reiterates its position that PHHPC's proposed decision to disapprove the CON must be set aside.

¹⁰ The inaccuracies in the Executive Summary was one of several relevant topic that Judge Bordeaux prevented Petitioner from asking about during the Hearing. *See* Exhibit 1 at p. 149:21-25, 150:1-23, 173:15-25, 174-177:21, 181:6-184:14. 204:3-205:15, 227:8-229:21; Exhibit 2 at p. 256:5-20.

As an alternative to the conclusion reached in the Report and Recommendation, Petitioner reiterates its requests that DOH (1) be directed to revise the Executive Summary and the testimony of DOH staff at the EPRC meeting on January 26, 2023 and at the PHHPC meeting on February 9, 2023 so that only accurate and only relevant facts about Petitioner are presented to EPRC and PHHPC, (2) retract its recommendation to disapprove the CON, (3) acknowledge and retract misstatements concerning the existence and the application of laws, regulations, and DOH policies testified to, and (4) after such revisions are made, remand the CON to PHHPC for further consideration in accordance with its authority to grant a midwifery birth center license to Petitioner.

Please contact the undersigned if Petitioner can provide any further information that would aid PHHPC's decision. Petitioner requests that PHHPC issue its final determination with respect to the CON in a timely manner, so that Petitioner can pursue further legal action, if necessary.

Dated: August 19, 2024
Buffalo, New York

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RESOLUTION OF DISAPPROVAL

WHEREAS, the Public Health and Health Planning Council, pursuant to the provisions of Sections 2801-a, 2802 and 2803(11) of the Public Health Law, has considered any advice offered by any applicable Regional Health Systems Agency, the staff of the New York State Department of Health and the Establishment Committee of this Council; and

WHEREAS, on February 9, 2023, this Council proposed to disapprove application 202086 B for establishment and construction of a Midwifery Birth Center to be located at 414 Virginia Street, Buffalo; and

WHEREAS, following the applicant's request for a public hearing pursuant to said Section 2801-a(2), such a hearing was held before an Administrative Law Judge, and the Administrative Law Judge has, by her Report and Recommendation dated June 3, 2024, recommended disapproval of the application; and

WHEREAS, the Public Health and Health Planning Council has considered the record of said hearing and Report and Recommendation; it is hereby

RESOLVED, that this Council, after due deliberation, and for the reasons stated on the record at its meeting of this Council, on this 18th day of June 2025, hereby accepts the Recommendation set forth in said Report and Recommendation; and be it further

RESOLVED, that this Council, on this 18th day of June 2025, hereby disapproves the following application for the establishment and construction of a Midwifery Birth Center to be located at 414 Virginia Street, Buffalo.

APPLICATION NUMBER:

202086 B

FACILITY/APPLICANT:

Coit House, LLC
(Erie County)



Project # 202086-B
Coit House, LLC

Program: Midwifery Birth Center

County: Erie

Purpose: Establishment and Construction

Acknowledged: October 2, 2020

Executive Summary

Description

The Coit House LLC (Coit House), an existing limited liability company, requests approval for the establishment and construction of an Article 28 midwifery birth center at 414 Virginia Street, Buffalo, NY. The building is owned by Winkler Properties LLC, which will lease the space to Coit House. The proposed operator of Coit House will be Maura Winkler, a Certified Nurse-Midwife, who is the Director of Midwifery at Fika Midwifery, PLLC (Fika Midwifery), a private home birth practice currently operated at the proposed address. Fika Midwifery is the only independent, midwife-owned homebirth practice in Buffalo. Founded by Ms. Winkler in 2017, the practice currently employs three full-time midwives, ten birth assistants, and two administrative staff.

Coit House's preferred hospital for antepartum, intrapartum, or postpartum care is Mercy Hospital of Buffalo, 6 miles and 12 minutes from Coit House. A relationship with Mercy Hospital has been established for consultation, collaboration, and transfer of care. The preferred transfer hospital for neonatal transfer is Oishei Children's Hospital due to the presence of a Level III NICU.

OPCHSM Recommendation

Disapproval is recommended.

Need Summary

The Coit House LLC Midwifery Birth Center proposes to provide Birthing Service O/P. The applicant projects 876 visits and 133 births in the first year and 1,250 visits and 199 births in the third, with 27.61% Medicaid and 1.33% Charity Care.

Program Summary

The individual background review indicates the proposed member has not met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

Financial Summary

The total project cost of \$2,022 will be met via equity from Maura Winkler, the proposed operator of The Coit House, LLC.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Disapproval is recommended.

Council Action Date

February 9, 2023

Need and Program Analysis

Project Proposal

The Coit House, LLC, seeks approval to establish and certify an Article 28 Midwifery Birthing Center to be located at 414 Virginia Street in Buffalo (Erie County). Upon licensure as a midwifery birth center, The Coit House proposes to provide Birthing Center O/P in the same location where Maura Winkler, CNM, operates Fika Midwifery, an independent, midwife-owned home birth practice.

Proposed Operator	The Coit House, LLC
Doing Business As	The Coit House
Site Address	414 Virginia Street Buffalo, New York 14201
Shift/Hours/Schedule	24 hours/7 days per week
Services	Birthing Center O/P
Staffing (1st Year / 3rd Year)	8.5 FTEs / 10.5 FTEs
Medical Director(s)	Maura Winkler, CNM
Emergency, In-Patient, and Backup Support Services Agreement and Distance and Time	Mercy Hospital of Buffalo 6.2 miles / 12 minutes away Oishei Children's Hospital 1 mile/4 minutes

Background and Analysis

The primary service area is Erie County. Approximately 85% of current and past clients live in Erie County. The population of females of reproductive age in Erie County is estimated at 208,962 by the U.S. Census. The Cornell Program on Applied Demographics projects this same population to decrease slightly to 206,380 by 2025.

The facility is located in a Health Professional Shortage Area for primary care, dental health, and mental health and is designated within a Medically Underserved Population.

According to Data USA, in 2020, 96.97% of the population in Erie County had health coverage as follows:

Employer Plans	51.20%
Medicaid	19.80%
Medicare	13.70%
Non-Group Plans	11.30%
Military or VA	0.97%

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	57.67%	60.00%
Medicaid	34.60%	32.00%
Private Pay/Other	5.76%	6.00%
Charity Care	1.97%	2.00%

Based on their private practice experience, the applicant projects 867 visits and 133 births in Year One and 1,250 visits and 199 births in Year Three.

Fika Midwifery reports having a comprehensive and established consultation, collaboration, and referral system for patients requiring emergency and non-emergency transfers. This includes Mercy Hospital of Buffalo, 6 miles/12 minutes away for transfers with continued midwifery care, and Oishei Children's Hospital, 1 mile/4 minutes from the Coit House, which has a Level III NICU.

Character and Competence

The sole membership of The Coit House, LLC is:

Name	Ownership Interest
Maura Winkler	100.00%

Maura Winkler is a Certified Nurse Midwife and Owner of Fika Midwifery. She has owned Fika Midwifery for approximately five (5) years, where she currently provides prenatal care, home birth, well-woman care, and directs practice activities. Ms. Winkler has been a Registered Nurse since June 21, 2017, and also previously worked as a Doula.

Staff from the Division of Certification & Surveillance reviewed Ms. Winkler's disclosures regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, legal actions, and ownership interests in other healthcare facilities. Staff also canvassed the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database for any references to Ms. Winkler.

At the prompting of the Department, Ms. Winkler disclosed that she was being investigated by the State Education Department's Office of Professional Discipline since August 9, 2019. Ms. Winkler had not disclosed on her initial Schedule 2A application submitted on August 13, 2020 that she was being investigated, and after requests for additional information, Ms. Winkler and her counsel failed to provide the Department with details of the investigation.

Additionally, after the Department's inquiry about the State Education Department Office of Professional Discipline investigation, Ms. Winkler disclosed being named in two malpractice suits. The first suit was filed on February 11, 2022, in Erie County Supreme Court by the patient. The patient alleges that negligent care and treatment was a contributing cause of the delivery of a stillborn infant. The patient was initially treated by Ms. Winkler on March 18, 2019, and it was found that she was 14 weeks pregnant by in vitro fertilization. The patient requested not to have an ultrasound but was informed that an ultrasound was necessary if she wanted to give birth outside of the hospital. An ultrasound was performed on April 8, 2019, and the results were significant for bilateral small (3-5mm) choroid plexus cysts (buildup of fluid on the baby's brain). The patient had her last appointment with Ms. Winkler on June 3, 2019; Group Beta Streptococcus (GBS) was discussed, and the patient stated she wanted a screening for it because she had tested positive in a prior pregnancy. The patient later tested positive for GBS on August 5, 2019, and it is documented by another midwife, Carolyn Protter, CNM (CNM Protter), that she wanted standard IV medication treatment. Documentation of the patient's desire to receive GBS treatment and refusal to receive erythromycin and Vitamin K after delivery occurred on August 14, 2019.

On September 7, 2019, time unknown, the patient contacted CNM Protter, informing that she had clear, odorless fluid leaking but had good fetal movement and the patient was instructed to come to Fika Midwifery at 10 pm if she had not started labor to assess for rupture of membranes. It is unclear what time the patient arrived, but it is noted at 9:30 pm that gross rupture of membranes had occurred (the patient's water broke), and the patient refused to do a sterile speculum exam, which is needed to determine whether dilation is occurring appropriately. On September 8, 2019, time unknown, the patient informed CNM Protter that she had irregular contractions throughout the night, but they eventually regulated. The patient and CNM Protter returned to Fika Midwifery and an IV access was attempted for GBS prophylaxis medication. The IV was successfully placed but IV access was lost after the initial saline flush and the patient declined a second IV attempt. The patient was informed that without the use of the IV, she would not receive GBS treatment (as she had originally requested and is required when a patient has tested positive for GBS). The patient was offered the option of hospital transfer and declined.

In the late evening of September 8, 2019, while the patient was still at Fika Midwifery, the baby began crowning and thick meconium was noted, whereby the baby had a bowel movement while still in the patient's womb, which is a very dangerous occurrence. Eventually, delivery occurred where the baby's body followed before the nuchal cord could be reduced and the baby was apneic (the umbilical cord was around the baby's neck) with no audible heart rate upon delivery. Neonatal resuscitation began, breaths

were delivered, and suction was attempted. The ambulance was called, and the baby was transported to Oishei Children's Hospital, where the baby was pronounced dead. The cause of death was determined to be complications from prolonged rupture of membranes with acute necrotizing chorioamnionitis. The case remains pending.

The second case was filed in Erie County Supreme Court on April 12, 2022, by the patient. The patient alleges negligent, careless, and unskilled care and treatment, causing her to suffer severe injury on February 24, 2020. The patient was treated by Ms. Winkler as a non-medical consult and given a tour of Fika Midwifery. The patient was treated by CNM Protter as a new patient on August 12, 2019. The patient had a past medical history that was significant for a previous Cesarean section in August 2017. CNM Protter discussed the benefits and risks of an out-of-hospital birth, including the risk of morbidity and mortality. Thereafter, the patient was seen again at Fika Midwifery on January 24, 2020, by a different midwife, Lydia Doublestein, CNM, CLC, and the risks of emergent care and the option for transfer to a different practice for elective C-section were discussed. On February 24, 2020, the patient called CNM Protter and indicated she was in labor. The patient was instructed to go to Fika Midwifery where she labored for seventeen (17) hours. At some point during the evening of February 24, the fetal heart rate was unable to be heard and unable to be visualized with a sonogram. The ambulance was called, and the patient was transferred to Oishei Children's Hospital where an emergency C-section was performed. The baby was stillborn and unable to be resuscitated. The case remains pending.

Ms. Winkler was asked to provide patient selection criteria, risk criteria, and selection criteria for Coit House. Ms. Winkler stated that all risk criteria and transfer protocols for the Coit House will be in accordance with standards for Birth Centers and that patients will remain low risk throughout the course of their care. Further, Ms. Winkler stated that if a patient has a chronic medical condition, develops a complication of pregnancy that requires hospital care, or Coit House is unable to comply with the patient requirements, they will transfer the patient to a provider/birth facility that can meet the patient's needs. The transfer indication and guidelines dictated by the Commission for Accreditation of Birth Centers accreditation (CABC) are proposed to be implemented at Coit House. As indicated in the malpractice lawsuits, both patients had chronic medical conditions or developed complications of pregnancy that would not classify them as a low-risk pregnancy, such that Fika Midwifery (or Coit House) would not be the appropriate facility for the patients to have their diagnoses treated.

Ms. Winkler was asked to provide information on the Continuous Quality Improvement (CQI) that was conducted by Fika Midwifery/Coit House before and as a result of the prior adverse events that took place. Ms. Winkler stated that CQI was implemented in 2020 after and for purposes of pursuing CABC accreditation but did not provide evidence of any previous CQI activity. Ms. Winkler disclosed that the baby deaths resulting in the malpractice lawsuits were reviewed by the CABC using root cause analysis methodology but did not provide evidence of the CABC review and its outcome. Ms. Winkler provided a chart of a breakdown of data from years 2017 through 2022 but did not include audits, quality minutes, or data on how the practice changed or evolved to achieve lower percentages of poor outcomes. Ms. Winkler also did not provide evidence that the sentinel events were reviewed prior to or after pursuing CABC accreditation for auditing of practice purposes.

When asked to provide evidence of how the sentinel events changed Fika Midwifery/Coit House policies, procedures, and practice, Ms. Winkler responded that she pursued CABC accreditation. CABC accreditation requires policies and procedures that are supported by evidence-based practice. Ms. Winkler did not provide evidence of changes to policies and procedures due to the sentinel events, due to any independent audit of the events, or produce evidence of changes that were made that would support documented efforts to ensure safe patient care. The changes at Fika Midwifery/Coit House that were revealed and reported to have been implemented by Ms. Winkler upon pursuing CABC accreditation included increased access to educational resources, updates to policies and procedures to include a risk assessment including evaluation throughout care from prepartum through postpartum, a chart review mechanism where postpartum charts are reviewed to assess compliance with practice policies, an updated policy that emphasizes chain of command when the Director of Midwifery is absent, and staff attended a drill to role-play how to manage a difficult client and family members. Although the staff is provided with neonatal resuscitation training bi-annually and was trained in 2019 and 2021, Ms. Winkler did not provide review of the neonatal resuscitation or any drills after the sentinel events occurred for

additional training opportunities for staff. Based on the foregoing representations by Ms. Winkler, Fika Midwifery/Coit House received accreditation by CABC in September 2021.

Finally, Ms. Winkler was asked, based on the submitted risk criteria, how it would be decided when/if to consult a physician, transfer care, decide where the patient would be treated or give birth, identification of the patient's primary provider, and what input the patient had in the decision-making process. Ms. Winkler provided a general overview stating the answers are dependent on the patient diagnosis and that some clients will risk out-of-birth center care based on the provider's initial assessment and will need to birth in the hospital setting while others remain in midwifery and community birth center care with modifications.

The staff from the Division of Certification & Surveillance also review the ten-year surveillance history of all associated licensed facilities. There are no known associated licensed facilities for the applicant.

Physical Environment

The proposed site is an existing 3-story residential, historic building consisting of (2) birth rooms on the 2nd floor and (2) gynecological exam rooms on the 3rd floor. As submitted, the proposed space is not compliant with Life Safety Code (NFPA 101), Facility Guidelines Institute, and Americans with Disabilities Act (ADA) as required for Article 28 Licensed facilities.

The physical environment issues remain unresolved with the applicant due to the Department's recommendation of disapproval on the basis of character and competence.

The major areas that require review are egress, infection control, and accessibility:

- 1) The single exit stair for the 3-story building contains multiple egress deficiencies and requires further review to determine if modifications could achieve a nontraditional code path toward compliance.
- 2) Hand-washing sinks, required for infection control in rooms where hands-on patient care is provided, are not provided in the gynecological exam rooms.
- 3) As a place of business for public accommodation and access to healthcare, no provisions for ADA accessibility are provided for patients, staff, or visitors. Provisions for accessibility should be provided to the maximum extent feasible.

Verification of other Life Safety Code and Facility Guidelines Institute standards, including emergency lighting, exit signage, basement and attic fire protection, and secure medication storage are outstanding.

Conclusion

Disapproval is recommended as the applicant member has not met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

Financial Analysis

Total Project Cost and Financing

The project costs are for moveable equipment and CON Fees and are estimated at \$2,022, detailed as follows.

Moveable Equipment	\$22
CON Fees	<u>2,000</u>
Total Project Cost	\$2,022

The proposed member of Coit House, LLC will provide equity through her personal resources to meet the total project cost.

Lease Rental Agreement

The applicant has provided an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	4,398 square feet located at 412 Virginia Street, Buffalo, New York
Lessor	Winkler Properties, LLC
Lessee	The Coit House LLC
Term	5-year term
Rental	Year One \$61,500 annually (\$13.98 per sq. Ft.) with a 2.5% increase thereafter.
Provisions	The lessee shall be responsible for maintenance, utilities, repairs, and real estate taxes.

The applicant has indicated that the lease arrangement will be a non-arm's length lease arrangement in that Maura Winkler and her husband are members of the realty company. The applicant submitted two real estate broker letters attesting to the reasonableness of the per-square-foot rental.

Capability

Project costs of \$2,022 will be met via equity from the proposed member's personal resources. Presented as BFA Attachment A is the personal net worth statement of the proposed member of Coit House, LLC, indicating the availability of sufficient funds for the equity contribution.

Conclusion

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

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to disapprove the application referenced below to establish and construct a Midwifery Birth Center to be located at 414 Virginia Street, Buffalo, and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER

202086

APPLICANT/FACILITY

Coit House, LLC

Maura Winkler
9/14/2022

ASSETS:

Cash	\$122,105
Accounts Receivable	191,000
Real Estate	<u>550,000</u>
TOTAL ASSETS	\$863,105

LIABILITIES:

Notes Payable	\$51,000
Mortgage Payable	<u>431,603</u>
TOTAL LIABILITIES	\$482,603

NET WORTH	\$380,502
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Pro Forma Balance Sheet

ASSETS:

Cash	\$183,333
Moveable Equipment	22
CON Fees	<u>2,000</u>
TOTAL ASSETS	\$185,355

LIABILITIES:

Line of Credit	<u>\$91,666</u>
TOTAL LIABILITIES	\$91,666

NET ASSETS	\$93,689
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