

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

**AGENDA**

*August 6, 2015*

*Immediately following the Special Establishment and Project Review Committee meeting  
(which is scheduled to immediately follow the Special Health Planning Committee meeting  
scheduled to begin at 10:00 a.m.)*

*Empire State Plaza, Concourse Level  
Meeting Room 6, Albany*

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chairman

**II. APPROVAL OF MINUTES**

**Exhibit #1**

June 11, 2015

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

Howard A. Zucker, M.D., J.D., Commissioner of Health

**B. Report of the Office of Primary Care and Health Systems Management Activities**

Daniel Sheppard, Deputy Commissioner, Office of Primary Care and Health Systems Management

**C. Report of the Office of Quality and Patient Safety**

Patrick Roohan, Director, Office of Quality and Patient Safety

**D. Report of the Office of Public Health Activities**

Sylvia Pirani, M.S.,M.P.H. Director, Office of Public Health Practice

**IV. PUBLIC HEALTH SERVICES**

**Report on the Activities of the Committee on Public Health**

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

**V. HEALTH POLICY**

**Request for Stroke Center Designation**

**Exhibit #2**

**Applicant**

Jones Memorial Hospital

Peter Robinson, Member of the Health Planning Committee

**VI. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

**Exhibit #3**

Angel Gutiérrez, M.D., Chair of the Committee on Codes, Regulations and Legislation

**For Emergency Adoption**

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps)

15-12 Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids)

**For Adoption**

12-23 Amendment of Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR (Computed Tomography (CT) Quality Assurance)

**For Information**

14-13 Amendment of Parts 58 and 34 of title 10 NYCRR (Patient Access of Laboratory Test Results)

12-02 Amendment of Part 757 of Title 10 NYCRR (Chronic Renal Dialysis Services)

**VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

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

**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**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151162 C	University Hospital SUNY Health Science Center (Onondaga 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 Applications**

**Ambulatory Surgery Center - Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151107 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County) Dr. Brown – Recusal	Contingent Approval
2.	151178 C	Nicholas H Noyes Memorial Hospital (Livingston County) Ms. Hines - Recusal	Contingent Approval

**Diagnostic and Treatment Center - Construction**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151121 C	East Side Endoscopy (New York County) Dr. Martin - Interest	Contingent Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**

**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

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

**Exhibit #7**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	132131 B	SMC Manhattan Center (New York County)	Contingent Approval
2.	142069 B	Bethany Village Primary Care Network, Inc. (Chemung County)	Contingent Approval
3.	142222 B	Healthquest Health Center, LLC (New York County)	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #8**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151014 E	PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation and Nursing Center (Clinton County)	Contingent Approval

2.	151085 E	AURNC Operating, LLC d/b/a Auburn Rehabilitation & Nursing Center (Cayuga County)	Contingent Approval
3.	151087 E	BVRNC Operating, LLC d/b/a Blossom View Rehabilitation & Nursing Center (Wayne County)	Contingent Approval
4.	151182 E	1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell (Steuben County)	Contingent Approval
5.	151191 E	West Ledge Op, LLC d/b/a Pinnacle Center for Rehabilitation on the Hudson (Westchester County)	Contingent Approval

**Certified Home Health Agency - Establish/Construct**

**Exhibit #9**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151118 E	Willcare (Orange County)	Contingent Approval
2.	151119 E	Willcare (Erie 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 Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #10**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151205 E	Peconic Bay Medical Center (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

2.	151217 E	North Shore LIJ Healthcare, Inc. (Nassau County) Mr. Kraut – Recusal	Contingent Approval
3.	151221 E	Southampton Hospital (Suffolk County) Mr. Kraut – Recusal	Contingent Approval
4.	151247 E	Eastern Long Island Hospital (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

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

**Exhibit #11**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151166 B	The Birthing Center of NY (Kings County) Dr. Kalkut - Interest	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #13**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142278 E	Nesconset ZJ 1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Ms. Carver-Cheney - Recusal	Contingent Approval
2.	142279 E	Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing (Suffolk County) Ms. Carver-Cheney - 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 or HSA

**CON Applications**

**Dialysis Services – Establish/Construct**

**Exhibit #12**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 151169 E	Westchester Center for Renal Care (Westchester County) Dr. Brown – Abstained at EPRC	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #13**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1968 L	Finecare Homecare, Inc. (New York, Kings, Queens and Bronx Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
1972 L	Beth Israel Homecare Inc., d/b/a American Homecare in NY (New York, Kings, Queens, Bronx, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2217 L	Savi’s Homecare Services, Inc. (Bronx, Kings, Queens, Richmond, New York and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2251 L	Samaritan Services, Inc. (Kings, Queens, Bronx, Richmond, New York and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2258 L	Epic Home Care, LLC (Westchester, Putnam, Rockland, Sullivan, Dutchess, Ulster and Orange Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2265 L	Curatio Health Care Systems, LLC d/b/a Curatio Home Care Services (Bronx, Kings, Queens, Richmond, New York and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2273 L	Caresense Health, LLC (Kings, Queens, New York, Bronx and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2298 L	Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669 (Richmond County) Ms. Hines – Abstained at EPRC	Contingent Approval
2376 L	Warm Touch Home Care, LLC (Queens, Kings, Bronx, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2382 L	Amazing Grace Home Care Solutions, LLC (Albany, Schenectady and Rensselaer Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2386 L	Reliable Home Care Service Corp. (Bronx, Kings, Queens, Richmond and New York Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2390 L	Long Island Licensed Home Health Care Agency, LLC (Queens County) Ms. Hines – Abstained at EPRC	Contingent Approval
2398 L	Mason & Bugayeva Home Care Services, Inc. (Kings, Bronx, Queens and New York Counties) Ms. Hines – Abstained at EPRC	Contingent Approval



2408 L	Inspired Inhouse Health Care, Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2420 L	Care for Seniors, LLC d/b/a Home Instead Senior Care (Richmond, Kings and New York Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2421 L	Accolade Care, Inc. (New York, Kings, Queens, Bronx and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2422 L	JJ Wells Company, LLC d/b/a Nurse Next Door Manhattan (New York County) Ms. Hines – Abstained at EPRC	Contingent Approval
2426 L	Bantam Enterprises, Inc. d/b/a Right at Home (Westchester, Rockland, Orange, Putnam, Sullivan, Ulster, Dutchess, Nassau, Suffolk and Bronx Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2428 L	Golden Promises Home Care LLC (Westchester, Rockland, Orange, Putnam, Sullivan, Ulster, Dutchess, Nassau, Suffolk and Greene Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2431 L	KB HomeCare, Inc. d/b/a Visiting Angels (Westchester and Putnam Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2439 L	Thelus Specialty Care Agency, LLC (Suffolk, Nassau, Westchester, Rockland and Queens Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2453 L	Caring Connections, LLC (Rockland County) Ms. Hines – Abstained at EPRC	Contingent Approval
2470 L	Centercare Home Care Agency, LLC (Queens, New York, Bronx, Kings, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2476 L	Infinite Care, Inc. (Kings, Queens, Richmond, New York, Bronx and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2486 L	Jefferson’s Ferry Home Care, Inc. (Suffolk and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2648 L	Columbia County Department of Health (Columbia County) Ms. Hines – Abstained at EPRC	Contingent Approval
2598L	Wavecrest HFA, Inc. d/b/a Wavecrest Home Care (Queens County) Ms. Hines – Abstained at EPRC	Contingent Approval
2599L	Parkview HFA, Inc. d/b/a Parkview Home Care (Bronx County) Ms. Hines – Abstained at EPRC	Contingent Approval
2613L	Woodland Village, LLC d/b/a Fawn Ridge Home Care (Albany, Columbia, Fulton, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington and Dutchess Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2286L	Attentive Home Care Agency, Inc. d/b/a Always Home Care (Bronx, Kings, Nassau, New York, Richmond and Queens Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2315L	Universal Health Care, LLC d/b/a At Your Side Home Care Services (Bronx, Kings, New York, Queens, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2373L	Platinum Home Health Care, Inc. (Nassau, Bronx, Kings, New York, Queens and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2506L	Effective Home Care, L.L.C. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2530L	Angel Care, Inc. (Bronx, Kings, New York, Queens, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2567L	HCS Home Care of Westchester, Inc. d/b/a A&J Home Care (Putnam and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2616L	Willcare, Inc. d/b/a Willcare (See exhibit for list of Counties served) Ms. Hines – Abstained at EPRC	Contingent Approval
2617L	Litson Health Care, Inc. d/b/a Willcare (See exhibit for list of Counties served) Ms. Hines – Abstained at EPRC	Contingent Approval

2288L

Morningside Acquisition III, LLC  
d/b/a Morningside at Home  
(Bronx County)  
Ms. Hines – Abstained at EPRC

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #14**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2313L	AHS Criticare, LLC (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Ms. Carver-Cheney – Recusal Ms. Hines – Abstained at EPRC	Contingent Approval

**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**

**Ambulatory Surgery Centers– Establish/Construct**

**Exhibit #15**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 151186 B	Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County)	Deferred One Meeting Cycle

**Acute Care Services– Establish/Construct**

**Exhibit #16**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142211 B	Sympaticare, LLC d/b/a Summit Park Hospital (Rockland County)	To be presented at the Special Establishment/Project Review Committee on 8/6/15 No Recommendation

**Residential Health Care Facility– Establish/Construct**

**Exhibit #17**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 141223 B	Sympaticare, LLC d/b/a Summit Park Nursing Care Center (Rockland County)	To be presented at the Special Establishment/Project Review Committee on 8/6/15 No Recommendation

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

**Exhibit #18**

Applicant

Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc.

E.P.R.C. Recommendation

To be presented at the Special Establishment/Project Review Committee on 8/6/15  
No Recommendation

**VIII. AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE**

**Adoption of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care Recommendations**

**Exhibit #16**

Peter Robinson, Chair

**IX. EXECUTIVE SESSION – CLOSED TO THE PUBLIC**

**PROFESSIONAL**

Dr. Glenn Martin, Chair

**Executive Session**

**Report of the Committee on Health Personnel and Interprofessional Relations**

One case arising under PHL 2801-b

**X. NEXT MEETING**

September 24, 2015 - NYC

October 8, 2015 – NYC

**XI. ADJOURNMENT**

**State of New York**  
**Public Health and Health Planning Council**

**Minutes**  
**June 11, 2015**

The meeting of the Public Health and Health Planning Council was held on Thursday, June 11, 2015 at the New York State Department of Health Offices at 90 Church Street, 4<sup>th</sup> Floor, Rooms 4A & 4B, NYC. Vice Chair, Dr. Jo Ivey Boufford presided.

**COUNCIL MEMBERS PRESENT**

Dr. Howard Berliner Dr. Jo Ivey Boufford Dr. Lawrence Brown Mr. Michael Fassler Ms. Kim Fine Dr. Ellen Grant Dr. Angel Gutierrez Ms. Vicky Hines Mr. Thomas Holt	Dr. Gary Kalkut Dr. Glenn Martin Ms. Ellen Rautenberg Dr. John Ruge Mr. Peter Robinson Dr. Patsy Yang
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**DEPARTMENT OF HEALTH STAFF PRESENT**

Mr. Charles Abel Ms. Nancey Agard – Albany via video Mr. Alex Damiani – Albany via video Mr. Christopher Delker Mr. James Dering Ms. Alejandra Diaz – Albany via video Mr. Joseph DiMura – Albany via video Ms. Sally Dreslin Mr. Steve Gavitt – Albany via video Dr. Foster Gesten – Albany via video Mr. Michael Heeran – Albany via video Ms. Yvonne Lavoie – Albany via video	Ms. Colleen Leonard Ms. Karen Madden – Albany via video Ms. Jackey Matson – Albany via video Ms. Elizabeth Misa – Albany via video Mr. Steve Ragone – Albany via video Ms. Linda Rush - Albany via video Ms. Jessica Spurdis – Albany via video Mr. Michael Stone – Albany via video Ms. Lisa Thomson Ms. Lisa Ullman – Albany via video
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**INTRODUCTION**

Dr. Boufford called the meeting to order and welcomed Council members, meeting participants and observers.

**APPROVAL OF THE MINUTES OF APRIL 16, 2015**

Dr. Boufford asked for a motion to approve the April 16, 2015 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval, Dr. Kalkut seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

## **ADOPTION OF THE 2016 MEETING DATES**

Dr. Boufford asked for a motion to adopt the 2016 PHHPC Meeting Dates of the Public Health and Health Planning Council meeting. Dr. Kalkut motioned to adopt, Dr. Berliner seconded the motion. The 2016 Meeting Dates were unanimously adopted. Please refer to page 2 of the attached transcript.

Dr. Boufford turned the floor over to Ms. Dreslin to give the Report of the Department of Health Activities.

## **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

Ms. Dreslin began his report by announcing that Dr. Zucker was confirmed by the Senate in May to serve as the State's 16<sup>th</sup> Health Commissioner. She expressed that we are delighted to have him at the helm of the Department. He brings with him an impressive resume that includes stints at the White House, health and human services and the World Health Organization. Dr. Zucker is a physician with multiple specialties as well as a lawyer and that he is pleased to be working with the Council in pursuing the State's many public health initiatives.

### **AIDS Epidemic**

Ms. Dreslin stated that in late April, Governor Cuomo received the final blueprint for End the Epidemic, which is the Governor's three point plan to move us closer to the end of the AIDS epidemic. The goal of this initiative is to reduce the annual number of new HIV infections to just 750 by 2020. That is a considerable drop from an estimated 3000 cases annually today. In doing so we will likely achieve our first ever decrease in HIV prevalence, that is the number of persons living with HIV infection in New York will start to fall for the first time since the epidemic. The three point plan includes identifying persons with HIV who remain undiagnosed and link them to healthcare, linking and retaining persons diagnosed with HIV in healthcare to maximize viral suppression so they remain healthy and prevent further transmission, and facilitating access to pre-exposure prophylaxis, PREP, for persons who are engaged in high-risk behaviors to keep them HIV negative. To develop a plan to accomplish these three points, the Governor appointed the New York State Ending the Epidemic Taskforce which included PHHPC member and vice-chair Dr. Boufford. The recommendations included in the final blueprint focus on New York State's highly successful existing HIV prevention and care efforts. At the same time the recommendations address stigma and discrimination in an effort to approve health equity. Governor Cuomo received the final blueprint on April 29 in New York City surrounded by many of the taskforce members who had worked so hard toward it's development. The document provides New York State with a concrete set of next steps to decrease new infections and improve the lives of all New Yorkers living with HIV and AIDS. Many of the blueprint recommendations can be implemented without additional resources. Last year in anticipation of this announcement the Governor signed into law several policy initiatives including simplified oral consent for almost all HIV testing and expanded authorization for data sharing to link persons with HIV to care and treatment. In the 2014-15 State budget there was included a 30 percent rent cap for clients of the New York City HIV AIDS services administration, HASA, persons with HIV living in subsidized housing in New York City will pay no more than 30 percent of their income toward rent. This will enable them to stay housed which enables people to stay focused on improving their health. In addition, Medicaid successfully negotiated

supplemental rebates for antiretroviral medications with pharmaceutical companies so the State can stay within the Medicaid goal will cap while promoting universal viral suppression among HIV infected persons. In the 2015-16 State budget, additional statutory changes were achieved including reducing arrests where condoms and syringes are involved and eliminating the requirement for written consent for HIV testing in correctional facilities. These changes will interrupt the transmission of HIV and assist in identifying persons with HIV so they can be linked with care. The Department of Health also continues to direct resources to activities most likely to end the HIV epidemic. In order to expand access to PREP, pre-exposure prophylaxis, the Department of Health now offers the PREP Assistance Program, or PREP-AP, which provides financial assistance for patient healthcare and laboratory costs. PREP includes regular medical visits, periodic HIV testing, screening for STDs and other laboratory tests, and if a person is uninsured or has health insurance that does not reimburse for some of the PREP services, he or she can use PREP-AP to access the services free of charge. Currently a match between HIV Medicaid data and the HIV AIDS registry is underway, and the results of this will provide information on the number of HIV positive Medicaid members who are not yet virally suppressed. This information can be used to improve linkage and retention and care for these individuals. An additional \$10 million investment in the State budget will allow New York to enhance existing programs and address lingering gaps in prevention and care. To get the word out we launched End the Epidemic marketing campaign in mid-March that's in effect across the State. And the blueprint is available electronically on the DOH website under either Ending the Epidemic or ETE.

### Cancer Prevention Summit

Ms. Dreslin noted that on May 20<sup>th</sup>, the Department held it's first ever cancer prevention summit in New York City with the help of Doctor Margaret Cuomo. The event was well-attended and featured an impressive list of top notch speakers including Dr.'s Colditz, Willet, Landrigan. What inspired the event was this incredible fact that nearly half of all cases of cancer are preventable, and yet this disease still claims the lives of 35,000 New Yorkers a year and remains the second leading cause of death in New York State. At the summit, the Department and it's partners agreed that even with all the advances in cancer treatment the time has come to renew our focus on cancer prevention. This means encouraging people to quit smoking, maintain a healthy weight, exercise regularly and use sunscreen, urging people when drinking alcohol to do so in moderation, have their adolescents vaccinated for HPV, take steps to protect themselves from sexually transmitted diseases, and get screened for breast, cancer, and cervical cancer. It also means forging partnerships and relationships that will help to create communities that make it easier for people to adopt cancer preventing behaviors. In having this conversation and holding this event, New York State is working to win the national war on cancer that began in 1971 under then President Nixon. In the years since, advances in treatment have done wonders to prolong the lives of people diagnosed with cancer, but it is now time to get back to an even better strategy to try and prevent the disease from happening in the first place. The Department looks forward to having more conversations about cancer prevention in the Department and beyond in the near future.



## Flu Season

Next, Ms. Dreslin advised that in June, we have officially come to the end of flu season. Ultimately the vaccine that was used to combat the flu season, the flu this season did not match the primary circulating strain. Even so, the season here in New York was of moderate severity and usual duration despite its statewide impact.

## Lyme Disease

Lastly, Ms. Dreslin reminded everyone that the warm weather brings with it tick season and the threat of Lyme Disease. Lyme Disease is a bacterial infection that spreads when an infected deer tick bites a person and remains attached for 36 hours or more. They're typically active when the weather stays above freezing, usually from April to November. However, while this past winter was unusually harsh, the long-lasting snow cover likely provided insulation that allowed the ticks to survive the winter. Since reporting of Lyme Disease to DOH began in 1986, New York State has averaged more than 5,500 new Lyme Disease cases each year. In the majority of cases an expanding rash resembling a bullseye or solid patch will appear near the site of the bite, and if a person develops an expanding rash with a diameter of more than two inches or flu-like symptoms occur over a 30-day period following the tick bite, they should contact their healthcare provider, and early treatment is your best defense against this serious disease.

Mr. Dreslin concluded her report. Dr. Boufford thanked her and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 2 through 8 of the attached transcript.

## **RESOLUTION OF APPRECIATION FOR DR. BIRKHEAD**

Dr. Boufford acknowledged the wonderful service and leadership of Dr. Gus Birkhead who will be retiring from the Department. She expressed that Dr. Birkhead has really been such an important leader in bringing the public health realities and aspects into the concerns of this Council and obviously has been leading in public health and safety for many years here in New York, and on behalf of the Council, Mr. Kraut and herself have signed a resolution of appreciation. Dr. Boufford read the resolution.

Dr. Birkhead noted that it means a lot to get this acknowledgement from the Council. He stated that he was reflecting that when he first came before the Council around 25 years ago to a Codes Committee meeting to push for regulations that required healthcare workers to have measles vaccination or proof of measles immunity and a lot has happened since that time. The Council has been a lot of what has driven and what has happened in public health in New York and some of the reports that he was associated with, childhood immunization, public health infrastructure and most recently the Prevention Agenda which the Council and all of us in public health should be a legacy going forward. Dr. Birkhead mentioned that he has been privileged to work with a tremendous team at the Health Department and at the broader public health community in New York. He noted that New York has a very strong public health system, but obviously needs more strengthening, and could not have accomplished what we have happened over these years without that strong system. He expressed that it has been a privilege working with the Council, and wished best of luck and that he is not going to disappear and hopes to be active in public health to continue going forward. Please see pages 10 through 15 of the attached transcript.

## **Report of the Office of Health Insurance Programs Activities**

Next, Dr. Boufford introduced Ms. Misa to give her report on the Activities of the Office of Health Insurance Programs.

Ms. Misa provided a brief update on the recent activities on the Office of Health Insurance Programs. The Department continues the implementation of the delivery system reform incentive payment program, also known as DSRIP, and as part of DSRIP implementation, CMS required the State to move toward a value-based payment model over the next five years. The first deliverable is a multi-year roadmap comprehensive payment reform. The Department has put together a (VBP) workgroup which has met several times to provide input on the move to value-based payments. The roadmap was posted earlier this year for public comment. Comments were incorporated and revised version was shared with CMS. This is currently under review by CMS, and CMS will be providing additional feedback to the Department shortly. In addition, the value-based payment workgroup will break into smaller subcommittees to focus on targeted issues to bring back recommendations to the larger group later this year. More information including the roadmap, webinars, whiteboard videos, and other materials are all available on the DSRIP website.

Ms. Misa stated that OHIP continues to move forward with care management for all. As of May 2015, approximately 5 million Medicaid members were enrolled in a Medicaid managed care product. The Department continues to transition benefits and populations into Medicaid managed care. In February the New York City nursing home benefit and population transition to managed care Nassau, Suffolk, and Westchester transitioned in April 2015, and the rest of State is scheduled to transition in July 2015. In addition, we are also in the midst of implementing health homes for children. The Department health home program along with it's state agency partners are currently reviewing 21 applications for entities seeking to serve children in health homes. Reviews are expected to be completed and designations announced later this month.

Ms. Misa concluded the report. Dr. Boufford inquired if members had questions or comments. To read the complete report please see pages 10 through 15 of the attached transcript.

Dr. Boufford introduced Dr. Gesten and Ms. Agard who was participating from Albany to update the Council on the Activities of the Office of Quality and Patient Safety.

## **Report of the Office of Quality and Patient Safety Activities**

Dr. Gesten noted that as a colleague to Dr. Birkhead he stated how proud he was of all the achievements that were listed off and that how thrilled he was to have worked with Dr. Birkhead for all these years.

Dr. Gesten began his report by giving a brief update on office-based surgery. The Council has been interested in this issue. There have been some interim reports given by himself and Ms. Agard over the past number of months, but as we are getting to the conclusion of our ad-hoc group specifically looking at adverse events, he wanted to give some updates.

Dr. Gesten presented a slide presentation. The slide presentation included:

- Legislative updates which will tremendously contribute to the Department's ability to both understand adverse events and hopefully have information and data to help prevent those adverse events that are preventable.
- Described aspects of the Executive Budget including the amendments to the OBS law.
- Detailed new requirement for practices relative to performing quality improvement and quality assurance activities and some confidentiality protections relative to that activity similar to what institutions have.
- Ad Hoc Committee established adding Dr. Kalkut, and a nurse to the membership.
- Update on Committee activities: 1) Consultations with the Accrediting Agencies: AAAASF, AAAHC, TJC, Professional Societies: MSSNY, OBS Society, NY-AORN, NYSSA, NYSANA, ASDIN, SIR, SVS, ARIN and Pending: GI Societies. 2) Additional focused analysis of OBS Adverse Event Data. 3) Engaged IPRO to review 2014+ deaths. 4) Investigating/pursuing use of other data sources - Medicaid, US Renal Data System, Anesthesia Quality Institute. 5) Plan to develop report of conclusions and next steps
- Observations: Data limitations, Accreditation requirements not identical between organizations, Specialty society standards not identical to accreditation requirements.
- Four Year Data Analysis – Cases from 2010-2013
- Next steps: 1) Report of the Ad Hoc Committee deliberations and recommendations. 2) Integrate Ad Hoc Committee with existing Advisory Committee

Dr. Gesten concluded his report. To read the detailed report and questions and comments from members, please see pages 17 through 35 of the attached transcript

Dr. Boufford thanked Dr. Gesten and moved to the next item on the agenda and introduced Dr. Birkhead to give the report of the activities of the Office of Public Health.

### **Report of the Office of Public Health Activities**

Dr. Birkhead began his report by bringing the Council's attention to two new data points that the Department have been looking at in disease prevention broadly in the State. The two leading causes of preventable morbidity and mortality are smoking and physical inactivity and overweight. The Department recently announced continued success on the front of reducing smoking in the state. The Governor made the announcement that New York's smoking rates dropped to 7.3 percent among high school students and 14.5 percent among adults, which is well below the national average and the lowest points since the Department has been measuring tobacco use. This is a tremendous success and a tribute to a large amount of work in the clinical sphere and also in the public health sphere to prevent youth smoking and to reduce and allow adults to quit smoking.

Dr. Birkhead stated another data point the rate of adult obesity and after a number of years of fairly level rate of adult overweight and obesity, in the last year have seen an increase again, mirroring what has been seen in other parts of the country as well. There is a need to redouble efforts and thinking around how to approach that from both a clinical point of view and a policy point of view. Dr. Birkhead explained that on the pediatric front which the Department measures through the WIC program that we have had success in actually bending the curve in very young children up to age five through using the WIC program to encourage use of fresh fruits and vegetables and other sorts of things.

Dr. Birkhead spoke on the topic of the press reports of the Middle Eastern respiratory syndrome cases occurring in Korea. There is an outbreak there in the healthcare system. Nosocomial or healthcare related transmission from a traveler who came back from the Middle East. MERS is a SARS like illness, can be quite severe. There have been approximately nine deaths in Korea with over 100 cases now reported. In the U.S. we had two imported cases in 2014. None to date here, we need to really redouble our efforts in healthcare settings to particularly ask about travel history and that has been highlighted during the Ebola events. Asking about travel history should be a routine in any acute care setting and not specifically to any part of the world, but we have illnesses now that could be coming from anywhere and having clinicians and staff in acute care settings familiar with what is happening around the world, where diseases are happening and asking have you traveled in the last couple weeks is a very key message to get across. The Department is expecting CDC to come out with an updated alert around MERS in the next few days and we will then be putting out a broad alert to the healthcare system in the State making a number of points, but that being a primary one.

Dr. Birkhead concluded his report. Dr. Boufford thanked Dr. Birkhead for his report. To read Dr. Birkhead's complete report please see pages 35 through 37 of the attached transcript.

## **HEALTH POLICY**

Dr. Boufford moved to the next topic, Health Policy and introduced Dr. Ruge to give the report on the activities of the Health Planning Committee.

Dr. Ruge gave a historical recap on the comprehensive review of CON and an updating of that process followed over another year and a half by looking at the spectrum of episodic care ranging from full service EDs to off-campus EDs to part-time off campus EDs to urgent care and extending to retail clinics.

Dr. Ruge noted that during the last 15 months there has been a proposed transformation of the health delivery system like never before. One fueled by DSRIP with the major metric being how to reduce avoidable hospitalizations associated ED visits by 25 percent over the next five years. In no small part with that in mind are now looking at a dual kind of focus. One being prompted by the fact that by the end of 2016 there is a statutory requirement that the Council update the bed need methodology for long term care.

Dr. Ruge explained the second focus, which is avoidable hospitalizations. It is primarily a problem for people with very complex interlocking dual diagnoses, be they related substance abuse or mental health issues combined with medical issues.

Dr. Ruge stated the schedule is front-loaded so that the principle work and attention over these next few months will be on the side of the long term care issues and the bed need methodology, so no later than January of next year, the policy recommendations are in place so that the Department can proceed with the technical changes based upon those policy insights that we as a committee and a council hope to generate. Concurrently the Committee will be looking at BHS primary care intervention.

Dr. Ruge concluded his report. Dr. Boufford thanked him and inquired if members had questions or comments. To view the complete report, please see pages 37 through 47 of the attached transcript.

## **REGULATION**

Dr. Boufford introduced Dr. Gutierrez to give his Report of the Committee on Codes, Regulations and Legislation.

### **Report of the Committee on Codes, Regulation and Legislation**

#### **For Information**

Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR – Computed Tomography (CT) Quality Assurance

Dr. Gutierrez described For Information Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR – Computed Tomography (CT) Quality Assurance. The New York City Department of Health and Mental Hygiene regulates the use of ionizing radiation within the five boroughs. This proposed regulation will provide quality assurance and safety standards that directly address CT physical and operational parameters. The proposed regulation would also require accreditation by a nationally recognized accrediting body that is acceptable to the Department which would be consistent with the accrediting bodies at the Center for Medicare and Medicaid Services accepts.

Dr. Gutierrez concluded his report. Please see pages 47 and 48 of the attached transcript. Dr. Boufford thanked him and moved to the next item on the agenda and introduced Mr. Robison to give Report of the Project Review Recommendations and Establishment Actions.

## **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

#### **Residential Health Care Facilities - Construction**

**Exhibit #4**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	142231 C Charles T Sitrin Health Care Center Inc (Oneida County)	Contingent Approval

Mr. Robinson introduced CON application 142231 and motioned for approval. Mr. Fassler seconded the motion. The motion to approve carried. Please see pages 20 and 21 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

**NO APPLICATIONS**

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**

**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Dialysis Services – Establish/Construct**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	151005 E	Vestal Healthcare II, LLC (Broome County)	Contingent Approval

**Residential Health Care Facilities – Establish/Construct****Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	142102 E	NHRC Acquisition, LLC d/b/a Humboldt House Rehabilitation and Nursing Center (Erie County)	Contingent Approval
2.	142221 E	Newfane Rehab & Health Care Center (Niagara County)	Contingent Approval
3.	151026 E	Kaaterskil Operating, LLC d/b/a Greene Meadows Nursing and Rehabilitation Center (Greene County)	Contingent Approval
4.	151083 E	Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing (Kings County)	Contingent Approval

Mr. Robinson called applications 151005, 142102, 142221, 151026, and 151083 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve passed. Please see pages 49 through 51 of the attached transcript.

**Certificates****Exhibit #7****Certificate of Incorporation**

<b><u>Applicant</u></b>	<b><u>Council Action</u></b>
Cuba Memorial Hospital Foundation, Inc.	Approval
The Osborn Foundation	Approval
Brookdale Health System Foundation	Approval

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

<b><u>Applicant</u></b>	<b><u>Council Action</u></b>
ECMC Lifeline Foundation, Inc	Approval

**Certificate of Dissolution**

<b><u>Applicant</u></b>	<b><u>Council Action</u></b>
Threshold Center for Alternative Youth Service, Inc.	Approval

Mr. Robinson introduces for approval for consent to file the above referenced certificates. Dr. Gutiérrez motions for approval, Mr. Fassler seconds the motion. The motion carries. Please see pages 51 and 52 of the attached 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

**Certificates**

**Exhibit #8**

**Restated Certificate of Incorporation**

**Applicant**

The Mount Sinai Medical Center, Inc.  
Dr. Martin – Recusal

**Council Action**

Approval

Mr. Robinson notes for the record that Dr. Martin has exited the meeting room declaring a conflict for the Restated Certificate of Incorporation of The Mount Sinai Medical Center, Inc. Mr. Robinson motions for approval for consent to file, Dr. Gutiérrez seconds the motion. The motion carries with Dr. Martin’s recusal. See pages 52 and 53 of the attached transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #9**

**Number**

**Applicant/Facility**

**Council Action**

2228 L

Above All Home Health Care Services, Inc.  
(Bronx, Kings, New York, Queens, Richmond and Westchester Counties)  
Ms. Hines – Abstained

Contingent Approval

2336 L

Albacare HHC, Inc.  
(Kings, New York, Queens, Bronx, Richmond and Nassau Counties)  
Ms. Hines – Abstained

Contingent Approval



2400 L	ANR Homecare Services, LLC (Queens, Kings, Richmond, New York, Bronx and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2160 L	Assisted Home Care, LLC d/b/a Prime Assisted Home Care (Kings, Queens, New York, Bronx, Richmond and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2302 L	Bridges to Home Care, Inc. (Dutchess, Westchester, Rockland, Orange, Putnam, Sullivan and Ulster Counties) Ms. Hines – Abstained	Contingent Approval
1724 L	CHAS Home Care, LLC (Kings, New York, Queens, Bronx and Richmond Counties) Ms. Hines – Abstained	Contingent Approval
2333 L	Comfort Home Care Services, Inc. (Queens, Kings, Richmond, Bronx, New York and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2454 L	Complete Companion Care, LLC (Oneida, Herkimer, Madison, Chenango, Lewis, Jefferson, Cortland and Onondaga Counties) Ms. Hines – Abstained	Contingent Approval
2210 L	Devotion Home Care, LLC (New York, Kings, Queens, Bronx, Richmond and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2282 L	Dominican Village, Inc. (Suffolk and Nassau Counties) Ms. Hines – Abstained	Contingent Approval

2418 L	Efficient Health Careers, Inc. d/b/a Efficient Home Care and Consulting Agency (Queens, Kings, Bronx, New York, Richmond and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2344 L	Elim Home Care Agency, LLC (Queens, Bronx, Kings and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2384 L	Harvey & Phelps, LLC d/b/a FirstLight HomeCare Hudson Valley (Orange, Ulster, Sullivan, Rockland, Dutchess and Putnam Counties) Ms. Hines – Abstained	Contingent Approval
2361 L	Helping Hands Home Care Solutions, LLC (Suffolk County) Ms. Hines – Abstained	Contingent Approval
2305 L	Hickok Center for Brain Injury, Inc. (Monroe County) Ms. Hines – Abstained	Contingent Approval
2307 L	Hi-Tech Charities (Bronx, New York, Kings, Queens, Richmond and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2396 L	Karing Hearts Agency Corp (Suffolk, Nassau and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2394 L	Long Life Home Care, Inc. (Richmond, New York, Kings, Queens, Bronx and Nassau Counties) Ms. Hines – Abstained	Contingent Approval

2450 L	Manhattan Home Care Ltd. (New York, Kings, Queens, Bronx and Richmond Counties) Ms. Hines – Abstained	Contingent Approval
2192 L	Mercy’s H&C Service, Inc. (Suffolk and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2594 L	Oswego County Department of Health (Oswego County) Ms. Hines – Abstained	Contingent Approval
2388 L	Paraklete H.H.C., d/b/a A Better Care Option (New York, Queens, Kings, Bronx, Richmond and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2374 L	Philippians Staffing Services, Inc. d/b/a PSS Home Care (Queens, Kings, New York, Bronx, Richmond and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2306 L	Red Sun Home Care, Inc. (Queens, New York, Bronx, Richmond, Kings and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2434 L	Rehoboth Care, Inc. (New York, Kings Queens, Bronx, Richmond and Nassau Counties ) Ms. Hines – Abstained	Contingent Approval
2445 L	Shasia LLC (Suffolk County) Ms. Hines – Abstained	Contingent Approval

2203 L	Silver Lining Homecare Agency, Inc. (Kings, Queens, New York, Bronx and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2126 L	SS Elder In-Home Care, Inc. (Queens, Kings, Bronx, New York, Richmond and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2329 L	St. Auburn Corporation d/b/a Visiting Angels Living Assistance (Dutchess and Putnam Counties) Ms. Hines – Abstained	Contingent Approval
2399 L	SSMC Services Corporation d/b/a Home Instead Senior Care (Kings, Queens, New York, Bronx, Richmond and Nassau Counties) Ms. Hines – Abstained	Contingent Approval
2430 L	ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home Licensed Home Care Service Agency (LHCSA) (Washington County) Ms. Hines – Abstained	Contingent Approval
2595 L	Garden of Eden Home, LLC d/b/a Garden of Eden Home Care (Kings County) Ms. Hines – Abstained	Contingent Approval
2597 L	Leroy Manor Home Care, LLC d/b/a Leroy Manor Home Care (Genesee, Allegany, Cattaraugus, Chautauqua, Erie, Niagara, Orleans and Wyoming Counties) Ms. Hines – Abstained	Contingent Approval
2601 L	Mariners Home Care, Inc. d/b/a Mariners Home Care (Richmond, Bronx, Kings, Queens, New York and Westchester Counties) Ms. Hines – Abstained	Contingent Approval

2607 L	Sullivan Manor, LLC d/b/a Sullivan Manor Home Care Agency (Sullivan, Orange, Ulster, Rockland and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2615 L	Kings Adult Care Center, LLC d/b/a Kings Licensed Home Care Services Agency (Kings, Bronx, New York, Queens and Richmond Counties) Ms. Hines – Abstained	Contingent Approval
2568 L	All American Homecare Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2552 L	Sterling Home Care, Inc. d/b/a Osborn Home Care (See exhibit for Counties served) Ms. Hines – Abstained	Contingent Approval
2190 L	Wondercare, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Ms. Hines – Abstained	Contingent Approval
2451 L	Heartstrings LLC d/b/a Heartstrings(Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester and Columbia Counties) Ms. Hines – Abstained	Contingent Approval

Mr. Robinson introduced the licensure applications listed above and motioned for approval. Dr. Gutiérrez seconds the motion. The motion carries with one abstention. Please see page 54 of the attached transcript.

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #10**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
2270 L	Caring Hearts of Rochester, LLC (Monroe, Ontario and Wayne Counties) Ms. Hines – Interest/Abstained	Contingent Approval

Mr. Robinson moved to Category 4 and introduced licensure application 2270 L and noted for the record that Ms. Hines has an interest. Mr. Robison motioned for approval, Dr. Berliner seconded the motion. The motion passed with Ms. Hines abstention. Please see page 54 of the attached transcript.

2177 L	NYC Home Health Care, LLC (Kings, Queens, New York, Bronx and Richmond Counties) Ms. Carver-Cheney – Recusal Ms. Hines – Abstained	Contingent Approval
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Mr. Robinson introduced licensure application 2177 L and noted for the record that Ms. Carver-Cheney was recusing and has exited the meeting room. Mr. Robison motioned for approval, Dr. Gutiérrez seconded the motion. The motion passed with one abstention and Ms. Carver-Cheney’s recusal. Please see pages 54 and 55 of the attached transcript.

**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**

**Exhibit #12**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1. 151008 B	Pittsford Pain Center LLC (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal	No Recommendation

Mr. Robinson next called application 151008 and motioned for approval which was seconded by Dr. Kalkut. After much discussion, the motion to approve failed. A second motion by Dr. Brown was made to move the agenda, Dr. Gutiérrez seconded the motion. The motion passed. The application was not approved or disapproved by the Council. To review the lengthy discussion, please see pages 55 through 78 of the attached transcript.

### **AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE**

Dr. Boufford moved to the next item on the agenda and introduced Mr. Robinson to give a report on the activities of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care.

Mr. Robinson thanked all the members of the Ad Hoc Committee and thanked Mr. Delker for his work. The Ad Hoc Committee was organized in order to take a look at why freestanding ambulatory surgery centers were falling short in reaching their projected number of cases for the underserved. The Committee met four times and heard from ambulatory surgery center operators, consumer groups, FQHCs, and the New York State Association of Ambulatory Surgery Centers as well as other stakeholders. Several factors were considered, such as one size fits all kind of approach to handling these charity care obligations. The Committee also considered the changing landscape. So in addition to those circumstantial factors, there was a report earlier about DSRIP and the impact that DSRIP is going to have, the expansion of coverage so that the number of people in New York State that are uninsured is being dramatically reduced with significant numbers going into Medicaid programs and others getting coverage through the exchanges. The structure of PPSs themselves as part of DSRIP is going to matter in terms of managing access and how patients are going to be organized to access care through these PPSs.

Mr. Robinson stated that the report reflects that there is no specific minimum or optimum proportion of Medicaid and charity care cases that can be prescribed uniformly for ambulatory surgery centers and the Committee is going to recommend that we remain open for input that the assessment of Medicaid and charity care efforts for each ambulatory surgery center be undertaken with regard to the individual characteristics of each applicant and the circumstances including the types of surgical procedures that are being proposed, how those services align with the rest of the organization of healthcare services in the market that they operate in, and also just geographically where the uninsured and the Medicaid populations live in relation to these ambulatory surgery centers.

Mr. Robinson further noted that these kinds of assessments could be done prospectively when applications come in so that the Council can establish some realistic goals that are relevant to each center and then use the five-year limited life period as a way of assessing them against almost a tailored set of standards and requirements.

Mr. Robinson explained that at the last meeting there was a set of key points. One was the need for better monitoring of ambulatory surgery centers in advance of the five year limited life renewal, so getting feedback here to the Council in advance of the end of the life, so we only have one opportunity at looking at this, but rather can review and provide further input to the Department on these applications that looks particularly at their Medicaid participation in charity

care rates. The other thing is that this interface between charity care and bad debt is likely to become a more prominent issue. When you look at how people access coverage through the exchange especially with these medal levels now where patient responsibilities can range from 10 percent to up to 40 percent of the cost of healthcare, for many people who take those lower levels of coverage, they are the ones that probably have the most limited ability to provide payment and so we fully anticipate that bad debt is going to be a bigger factor for ambulatory surgery centers and other providers as well in the future. We need to think about how we interface with that, but actually also look to the ambulatory surgery centers as part of the individual tailored plan that we might put into place to not necessarily expect but maybe to define proactively charity care for some part of that patient contribution for those patients that might be eligible for it.

Mr. Robinson asked Mr. Delker to provide some detail on additional information on the contribution that existing ambulatory surgery centers are making to the bad debt and charity care pools in the State. Mr. Delker noted that earlier there was information put together that was not complete in the sense that it represented only the amount that the ASCs were unable to collect from the payers and had to pay directly into the pool and that was about \$3 to \$4 million a year. The HCRA surcharge ambulatory surgery services delivered by freestanding providers, not hospital providers is 9.6 percent for commercial and indemnity plans and commercial managed care plans and it's about 7 percent on Medicaid, the non-State, State share of Medicaid and other government payers like workers compensation. The total of that contribution, that surcharge on ambulatory surgery centers over the six year period of 2009 to 14 inclusive was \$1.7 billion. The freestanding ambulatory surgery activities represent a subsidy if you will to the hospital safetynets and other eligible safety net providers of that averages about \$285 million a year, although the average has been higher in recent years as the number of am-surge centers has increased. This provides more of a context for consideration of charity care and support of the underserved. There is already a transfer if you will of funds from ambulatory surgery centers into the safety net that's occurring by statute. In addition to the considerations this committee might want to add to providers for direct charity care and active enrolment of Medicaid clients.

Mr. Robinson concluded his report. To view the complete report and members questions, please see pages 79 through 91 of the attached transcript.

**ADJOURNMENT:**

Dr. Boufford adjourned the Council meeting.



**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**JUNE 11, 2015**  
**90 CHURCH STREET, CR 4A AND 4B**

1           JO BOUFFORD:    Good morning to everybody.  My name is Jo  
2 Boufford, I'm the vice-chair of the council and I have the  
3 privilege of calling us to order this morning and welcoming all  
4 of you to the meeting.  Jeff Kraut is unable to join us today.  
5 and welcome Ms. Dreslin who is joining us and will report a  
6 little bit later.

7           So let me go through the webcasting rules of the road here  
8 for those who are new or may have forgotten.  Want to remind the  
9 council members staff and audience, this meeting is subject to  
10 the open meetings law, is broadcast over the internet.  The  
11 webcasts are accessed at the Department of Health's website,  
12 NYHealth.gov.  The on-demand webcasts will be available no later  
13 than seven days after the meeting for up to 30 days and then a  
14 copy will be retained in the Department for four months.  Some  
15 ground rules for participation; this is a synchronized  
16 captioning meeting so it's important that people not talk over  
17 each other and because it makes it harder for the signer and the  
18 people who are being talked over as well.  The first time you  
19 speak, please state your name, and briefly identify yourself as  
20 a council member or a member of the Department staff.  This will  
21 also help with broadcasting and recording the meeting.  All  
22 microphones are hot which means they pick up every sound so  
23 please avoid rustling of papers and side conversations.  And as a  
24 reminder for our audience, there is a form that needs to be

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**JUNE 11, 2015**  
**90 CHURCH STREET, CR 4A AND 4B**

1 filled out before you enter the meeting room which records your  
2 attendance at the meetings. It's required by the Joint  
3 Commission of Public Ethics in accordance with executive law  
4 166, section 166 and the form is on the website for the  
5 Department under Certificate of Need so in the future you could  
6 pull it down and fill it out in advance, and we thank you for  
7 your cooperation in fulfilling these duties.

8       And, let's see here - so I will start right away I guess.  
9 Do we do the minutes first? Thank you. My order here is - so  
10 let me have a motion to approve the minutes from the last  
11 meeting? Second. All in - thank you very much. Alright.  
12 Minutes stand approved, and now - oh sorry. You have been given  
13 the dates for 2016 in your packet in advance. I'd like to ask  
14 for a motion to approve those minutes - those dates. Second.  
15 Alright. In favor and accepted so please be sure they're on  
16 your calendar. Members of the public be aware of them, and now,  
17 I'm reading from three different guidance systems here. now, I  
18 will, now lets move to the report that all of you have in front  
19 of you and we'll start with reports from the Department of  
20 Health and welcome Sally Dreslin who is executive deputy  
21 commissioner of health.

22

23       SALLY DRESLIN: Thank you very much. The anticipation. So  
24 good morning. It's a pleasure to be here today filling in for

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1 Dr. Zucker who sends his regrets. As you know, Dr. Zucker was  
2 confirmed by the Senate last month to be the State's 16<sup>th</sup> Health  
3 Commissioner. We're delighted to have him at the helm of the  
4 Department. He brings with him an impressive resume that  
5 includes stints at the White House, health and human services  
6 and the World Health Organization. He's a physician with  
7 multiple specialties as well as a lawyer and I know he's pleased  
8 to be working with all of you in pursuing the State's many  
9 public health initiatives. And we look forward to hearing more  
10 from him in the coming months.

11 We've had a few events at the Department since this group  
12 last met. In late April, Governor Cuomo received the final  
13 blueprint for End the Epidemic, which is the Governor's three  
14 point plan to move us closer to the end of the AIDS epidemic.  
15 The goal of this initiative is to reduce the annual number of  
16 new HIV infections to just 750 by 2020. That's a considerable  
17 drop from an estimated 3000 cases annually today. In doing so we  
18 will likely achieve our first ever decrease in HIV prevalence,  
19 that is the number of persons living with HIV infection in New  
20 York will start to fall for the first time since the epidemic.  
21 The three point plan includes identifying persons with HIV who  
22 remain undiagnosed and link them to healthcare, linking and  
23 retaining persons diagnosed with HIV in healthcare to maximize  
24 viral suppression so they remain healthy and prevent further

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1 transmission, and facilitating access to pre-exposure  
2 prophylaxis, PREP, for persons who are engaged in high-risk  
3 behaviors to keep them HIV negative. To develop a plan to  
4 accomplish these three points, the Governor appointed the New  
5 York State Ending the Epidemic Taskforce which included PHHPC  
6 member and vice-chair Dr. Boufford. The recommendations  
7 included in the final blueprint focus on New York State's highly  
8 successful existing HIV prevention and care efforts. At the  
9 same time the recommendations address stigma and discrimination  
10 in an effort to approve health equity. Governor Cuomo received  
11 the final blueprint on April 29 in New York City surrounded by  
12 many of the taskforce members who had worked so hard toward it's  
13 development. The document provides New York State with a  
14 concrete set of next steps to decrease new infections and  
15 improve the lives of all New Yorkers living with HIV and AIDS.  
16 Many of the blueprint recommendations can be implemented without  
17 additional resources. Last year in anticipation of this  
18 announcement the Governor signed into law several policy  
19 initiatives including simplified oral consent for almost all HIV  
20 testing and expanded authorization for data sharing to link  
21 persons with HIV to care and treatment. In the 2014-15 State  
22 budget there was included a 30 percent rent cap for clients of  
23 the New York City HIV AIDS services administration, HASA,  
24 persons with HIV living in subsidized housing in New York City

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1 will pay no more than 30 percent of their income toward rent.  
2 This will enable them to stay housed which enables people to  
3 stay focused on improving their health. In addition, Medicaid  
4 successfully negotiated supplemental rebates for antiretroviral  
5 medications with pharmaceutical companies so the State can stay  
6 within the Medicaid goal will cap while promoting universal  
7 viral suppression among HIV infected persons. In the 2015-16  
8 State budget, additional statutory changes were achieved  
9 including reducing arrests where condoms and syringes are  
10 involved and eliminating the requirement for written consent for  
11 HIV testing in correctional facilities. These changes will  
12 interrupt the transmission of HIV and assist in identifying  
13 persons with HIV so they can be linked with care. The  
14 Department of Health also continues to direct resources to  
15 activities most likely to end the HIV epidemic. In order to  
16 expand access to PREP, pre-exposure prophylaxis, the Department  
17 of Health now offers the PREP Assistance Program, or PREP-AP,  
18 which provides financial assistance for patient healthcare and  
19 laboratory costs. PREP includes regular medical visits,  
20 periodic HIV testing, screening for STDs and other laboratory  
21 tests, and if a person is uninsured or has health insurance that  
22 does not reimburse for some of the PREP services, he or she can  
23 use PREP-AP to access the services free of charge. And  
24 currently a match between HIV Medicaid data and the HIV AIDS

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1 registry is underway, and the results of this will provide  
2 information on the number of HIV positive Medicaid members who  
3 are not yet virally suppressed. This information can be used to  
4 improve linkage and retention and care for these individuals.  
5 An additional \$10 million investment in the State budget will  
6 allow New York to enhance existing programs and address  
7 lingering gaps in prevention and care. To get the word out we  
8 launched End the Epidemic marketing campaign in mid-March that's  
9 in effect across the State. And the blueprint is available  
10 electronically on the DOH website under either Ending the  
11 Epidemic or ETE.

12 As some of you know on May 20 the Department held it's  
13 first ever cancer prevention summit in New York City with the  
14 help of Doctor Margaret Cuomo. The event was well-attended and  
15 featured an impressive list of top notch speakers including  
16 Doctors Graham Colditz, Walter Willet, and Phillip Landrigan.  
17 What inspired the event was this incredible fact that nearly  
18 half of all cases of cancer are preventable. Half. And yet  
19 this disease still claims the lives of 35,000 New Yorkers a year  
20 and remains the second leading cause of death in New York State.  
21 At the summit, the Department and our partners agreed that even  
22 with all the advances in cancer treatment the time has come to  
23 renew our focus on cancer prevention. This means encouraging  
24 people to quit smoking, maintain a healthy weight, exercise

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1 regularly and use sunscreen. It means urging people when  
2 drinking alcohol to do so in moderation, have their adolescents  
3 vaccinated for HPV, take steps to protect themselves from  
4 sexually transmitted diseases, and get screened for breast,  
5 cancer, and cervical cancer. It also means forging partnerships  
6 and relationships that will help to create communities that make  
7 it easier for people to adopt cancer preventing behaviors. In  
8 having this conversation and holding this event, New York State  
9 is working to win the national war on cancer that began in 1971  
10 under then President Nixon. In the years since, advances in  
11 treatment have done wonders to prolong the lives of people  
12 diagnosed with cancer, but it's time to get back to an even  
13 better strategy to try and prevent the disease from happening in  
14 the first place. We look forward to having more conversations  
15 about cancer prevention in the Department and beyond in the near  
16 future.

17 And now that we're in June, we've officially come to the  
18 end of flu season. Ultimately the vaccine that was used to  
19 combat the flu season, the flu this season did not match the  
20 primary circulating strain. Even so, the season here in New  
21 York was of moderate severity and usual duration despite it's  
22 statewide impact. But for now, flu season is over. And before  
23 I wrap up I just want to remind everyone that the warm weather  
24 brings with it tick season and the threat of Lyme Disease. Lyme

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1 Disease is a bacterial infection that spreads when an infected  
2 deer tick bites a person and remains attached for 36 hours or  
3 more. They're typically active when the weather stays above  
4 freezing, usually from April to November. Not so much this year  
5 but - while this past winter was unusually harsh, the long-  
6 lasting snow cover likely provided insulation that allowed the  
7 ticks to survive the winter. Since reporting of Lyme Disease to  
8 DOH began in 1986, New York State has averaged more than 5500  
9 new Lyme Disease cases each year. In the majority of cases an  
10 expanding rash resembling a bullseye or solid patch will appear  
11 near the site of the bite, and if a person develops an expanding  
12 rash with a diameter of more than two inches or flu-like  
13 symptoms occur over a 30-day period following the tick bite,  
14 they should contact their healthcare provider, and early  
15 treatment is your best defense against this serious disease.  
16 And that wraps my comments. Thank you, Dr. Boufford.

17

18 JO BOUFFORD: Are there any questions for Ms. Dreslin?  
19 No? Thank you. Welcome. Hope we'll see you back again. Sorry  
20 you have to leave but, thanks for reporting to us. Give our  
21 congratulations to Commissioner Zucker. OK.

22 Let me just review the upcoming events for those of you  
23 that are timing yourselves. Ms. Miso will follow shortly. We  
24 will not have a report from the Office of Primary Care Health



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1 Systems, opposite Health Systems Management today. We will hear  
2 from the Office of Health Insurance Programs followed by Dr.  
3 Gestin and Ms. (Agard) Office of Quality and Patient Safety  
4 Activities on the topic of office-based surgery, and Dr.  
5 Birkhead will give an update on the Office of Public Health  
6 Activities. Dr. Gutierrez will present regulations for  
7 information, then we will go to project review and  
8 recommendations and in that context, Mr. Robinson will lead that  
9 discussion of the committee of establishment. Ad-hoc committee  
10 on freestanding ambulatory surgery and charity care, I think  
11 you're on again Mr. Robinson, and then we will go into executive  
12 session for consideration of one case.

13

14 JOHN RUGGE: What about the Planning Committee?

15

16 JO BOUFFORD: Oh! I'm sorry John. Well, you see, you're  
17 not on this one, but you're on this one. So that's why I'm  
18 having a challenge here.

19

20 JOHN RUGGE: Which one is real?

21

22 JO BOUFFORD: Well, this is a really good question. I  
23 guess I'll throw this one out and go to this one. So, after  
24 Gus, Dr. Rugge, esteemed Dr. Rugge, Chair of the Health Planning

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1 Committee will report on the activities of the Committee on  
2 Health Planning, followed by Codes, Regulations, Legislation;  
3 Dr. Gutierrez and then moving into Project Review. How's that?  
4 Sorry about that. Then, Dr. Grant will chair the discussion on  
5 the professional case in executive session.

6       So let me remind everyone on the process we're using for  
7 looking at the applications on members of the council and most  
8 guests who regularly attend are familiar with the reorganization  
9 and batching of the topics and categories, but we do batch the  
10 certificate of need applications. At this time all of the  
11 members are invited to ask if they would like to see a  
12 particular item taken out of the batch for individual  
13 consideration? Any such request from anyone? OK. So they'll  
14 stay, as is. And then we have already adopted the minutes. And  
15 we have already heard from Ms. Dreslin. So, I will now throw  
16 out the fallible list of things I'm supposed to do and move on  
17 the official one.

18       This is, the one thing I do want to do before we move ahead  
19 though is to indicate that this is the time for us to  
20 acknowledge the wonderful service and leadership of Gus Birkhead  
21 who will be retiring from the Department. He says. Sylvia was  
22 laughing earlier and said, he's had people chained to his desk,  
23 we may want to chain him to his desk to keep him from leaving,  
24 but we did want to acknowledge him during this meeting because

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1 he has really been such an important leader in bringing the  
2 public health realities and aspects into the concerns of this  
3 council and obviously has been leading in public health and  
4 safety for many years here in New York, and on behalf of the  
5 Council, Mr. Kraut and I have signed a very lengthy resolution  
6 of appreciation, but I will read it anyway, because I think he  
7 deserves it.

8 He served the citizens of the State of New York over the  
9 past 27 years beginning his state service in 1988 as a director  
10 of the general communicable diseases program. In his tenure he  
11 has served as director of the immunization program, director of  
12 the AIDS Institute, director of the Center for Community Health,  
13 and since 2007 the Deputy Commissioner of the Office of Public  
14 Health. In his capacity he has been responsible for over 2000  
15 staff, an annual budget of more than \$2 billion and over 100  
16 discreet public health area programs. His work in the  
17 Department of Health has spanned the administrations of five  
18 governors and seven commissioners of health, trained as a  
19 preventive medicine physician and as an epidemiologist he has  
20 spearheaded many investigations of disease outbreaks including a  
21 major measles outbreak that led to a national, *the national*  
22 two-dose vaccination policy. At the national level, he's  
23 overseen efforts to strengthen vaccine financing and safety of  
24 healthcare workers through influenza vaccination. Among his many

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1 accomplishments in the AIDS Institute was a major reduction in  
2 mother-to-child transmission of HIV. As a champion for public  
3 health Dr. Birkhead advocated the use of public health  
4 assessment, surveillance, policy development and assurance to  
5 achieve public health goals and led efforts to guide this  
6 council in it's previous incarnation and the current council now  
7 merged with the Health Planning Council to focus attention and  
8 take action on important public health issues in addition to  
9 it's responsibilities for facilities oversight. He has worked  
10 with the Public Health Committee of the Council to investigate  
11 and make recommendations to address the immunization of  
12 preschool children to improve the State's public health  
13 infrastructure, to develop and implement the State's Prevention  
14 Agenda, one and two since 2007 and in 2012 very importantly  
15 successfully pursuing national accreditation which was achieved  
16 in 2014, the first large state to be accredited. As director of  
17 the State's public health response to the 2009 H1N1 influenza  
18 epidemic and 2014-15 Ebola outbreak he kept this council  
19 informed and helped to take action to address these challenges.  
20 He came before the Council again to argue for regulatory reform  
21 to address a multitude of public health issues including spray  
22 parks in 2005, prevention of influenza by healthcare personnel  
23 most recently in 2014. Overall his efforts have contributed to  
24 significant health improvements as measured by a 10 percent

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1 reduction in the premature death rates since 1997, a 43 percent  
2 reduction in the number of people newly diagnosed with HIV since  
3 2000, a 22 percent reduction in smoking prevalence among adults  
4 since 1995. His leadership also helped New York move closer to  
5 achieving it's prevention agenda goal of becoming the healthiest  
6 state. In America's health rankings New York was ranked 40<sup>th</sup> in  
7 1990 and 14<sup>th</sup> in 2014. Whereas members of the Public Health and  
8 Health Planning Council recognize that during his years with the  
9 Department, Dr. Birkhead has demonstrated a strong commitment to  
10 the development and implementation of evidence-based programs  
11 and policies to improve the lives of all New Yorkers and whereas  
12 Dr. Birkhead's expert leadership and advice on a wide range of  
13 public health issues has furthered this Council's endeavors to  
14 improve the health of the citizens of New York State and whereas  
15 Dr. Birkhead's scientific integrity work ethic and  
16 professional demeanor under all circumstances has garnered the  
17 much deserved respect of the Council and his colleagues. Now,  
18 therefore be it resolved that members of the New York State  
19 Public Health and Health Planning Council wish to convey their  
20 deepest appreciation to Guthrie S. Birkhead for his dedication  
21 and selfless service to the citizens of our State and be it  
22 further resolved that the members of the New York State Public  
23 Health and Health Planning Council feel privileged to have been  
24 able to serve the citizens of New York State with Dr. Birkhead

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1 whom they hold in high esteem and offer best wishes for his  
2 future health, happiness and professional achievement. Thank  
3 you Gus.

4 [applause]

5  
6 GUS BIRKHEAD: So, now I am a little flustered, but thank  
7 you so much. It really means a lot to get this acknowledgement  
8 from the Council. I was reflecting that I first came before the  
9 Council probably 25 years ago to a Codes Committee meeting to  
10 push for regulations that required healthcare workers to have  
11 measles vaccination or proof of measles immunity and a lot has  
12 happened since that time. But, really, the Council has been a  
13 lot of what's driven what's happened in public health in New  
14 York and Jo mentioned some of the reports that I was associated  
15 with, childhood immunization, public health infrastructure and  
16 most recently I think the Prevention Agenda which I think for us  
17 the Council and all of us in public health should be a legacy  
18 going forward. Of course, nothing that was just mentioned  
19 happened by the result of one person's actions, so I've really  
20 been privileged to work with a tremendous team at the Health  
21 Department and at the broader public health community in New  
22 York. We really have a very strong public health system.  
23 obviously needs more strengthening, but I think we could not  
24 have accomplished what we, has happened over these years without

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1 that strong system, and I thank everyone. And again, its been a  
2 privilege working with you, and best of luck to you going  
3 forward. I'm not going to disappear. I hope to be active in  
4 public health to continue going forward. So thank you again.

5

6 JO BOUFFORD: This is great news. I just want to say  
7 personally it's been a real honor to work with you and see you  
8 in all different manner of situations, handled yourself with  
9 everyone, as everyone has said with the highest level of  
10 professionalism and responsiveness and the State owes you a  
11 great debt.

12

13 GUS BIRKHEAD: Thank you.

14

15 JO BOUFFORD: That's true. Three walls for of  
16 proclamations. Why not.

17 So, let's move back to the agenda then and we will hear  
18 from Ms. Misa who is participating via video from Albany to give  
19 us the report on the activities of the Office of Health  
20 Insurance Programs.

21

22 MS. MISA: Thank you and good morning. I'm going to provide  
23 a brief update on the recent activities on the Office of Health  
24 Insurance Programs. So the Department Continues the

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1 implementation of the delivery system reform incentive payment  
2 program, also known as DSRIP, and as part of DSRIP  
3 implementation, CMS required the State to move toward a value-  
4 based payment model over the next five years. The first  
5 deliverable is a multi-year roadmap comprehensive payment  
6 reform. The Department has put together a (VBP) workgroup which  
7 has met several times to provide input on the move to value-  
8 based payments. The roadmap was posted earlier this year for  
9 public comment. Comments were incorporated and revised version  
10 was shared with CMS. This is currently under review by CMS, and  
11 CMS will be providing additional feedback to the Department  
12 shortly. In addition, the value-based payment workgroup will  
13 break into smaller subcommittees to focus on targeted issues to  
14 bring back recommendations to the larger group later this year.  
15 More information including the roadmap, webinars, whiteboard  
16 videos, and other materials are all available on the DSRIP  
17 website. In addition, the office continues to move forward with  
18 care management for all. As of May 2015, approximately 5  
19 million Medicaid members were enrolled in a Medicaid managed  
20 care product. We continue to transition benefits and  
21 populations into Medicaid managed care. In February the New  
22 York City nursing home benefit and population transition to  
23 managed care Nassau, Suffolk, and Westchester transitioned in  
24 April 2015, and the rest of State is scheduled to transition in



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1 July 2015. In addition, we are also in the midst of implementing  
2 health homes for children. The Department health home program  
3 along with it's state agency partners are currently reviewing 21  
4 applications for entities seeking to serve children in health  
5 homes. Reviews are expected to be completed and designations  
6 announced later this month. And this concludes my report, and I  
7 would be happy to take any questions.

8

9 JO BOUFFORD: Any questions from anyone around the table?  
10 No, I think your public provision of information is quite  
11 extensive, so there might be - any other questions? Anyway,  
12 thank you very much.

13 Alright. Our next report, Dr. Gestin and Ms. Agard are  
14 also participating from Albany and are going to give us an  
15 update on the office-based surgery component of their work.  
16 Anything else they'd like to tell us about.

17

18 FOSTER GESTIN: Good morning. First, can you all hear me?  
19 Terrific. Well, I guess as a colleague to Gus I want to say how  
20 proud I am of all the achievements that you listed off and that  
21 how thrilled I am to have worked with Gus for all these years.  
22 There are things in that description that even I didn't know  
23 that Gus was a part of, so really gratifying to hear.



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1 OBS adverse events and extended the reporting period for  
2 practices from previously practices had a day, 24 hours to  
3 report events to three days, which again, we think will help to  
4 contribute to more and accurate reporting. There is  
5 a new requirement for practices relative to performing quality  
6 improvement and quality assurance activities and some  
7 confidentiality protections relative to that activity similar to  
8 what institutions have, and there's a requirement that  
9 accreditation, the accrediting agencies and there are three of  
10 them in New York State that accredit practices. Practices  
11 requires to be accredited by one of three agencies. There's a  
12 requirement that those accreditation agencies carry out and  
13 report back on surveys that are performed at the request of the  
14 Department of Health based on adverse events or other issues  
15 that may be of concern. There's some strengthening on the  
16 credentialing criteria for practices as well that the  
17 accreditation agencies will be using. Now, that's all of the  
18 glass-half-full portion of this. There were some aspects of  
19 what we're seeking in legislation that did not happen. There  
20 were some provisions that were proposed around coverage of  
21 office-based anesthesia, practitioners, and the context of this  
22 is that there were some offices that are performing anesthesia  
23 without specifically surgical interventions. These could  
24 include ECT or other kinds of interventions. And there were

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1 some thought that would be useful going forward to provide the  
2 same sorts of requirements protections for those practices that  
3 was not covered, that was not passed. There were some proposed  
4 limits on the amount of time, procedure time and recovery time  
5 in an office-based practice that was not passed. There was a  
6 proposal to expand the of the provisions to  
7 podiatrists and performing certain procedures in chiropractors  
8 that was not passed, and there was some clarification of whether  
9 neuraxial, regional nerve blocks were included and covered under  
10 legislation that we've been informally through FAQs advising  
11 practices it is covered. We thought it would make sense to  
12 clarify that in legislation but that was not included in the  
13 final budget.

14 Next slide, just going backwards a bit, going back to the  
15 fall we created an ad-hoc committee, mostly formed of a subset  
16 of our larger OBS advisory committee but we added some members  
17 including individuals that we thought would be particularly  
18 helpful to the issue of looking at adverse events. Dr. Gary  
19 Kalkut was added, a nurse as well was added to the membership,  
20 and as you can see on the slide, we had a number of meetings and  
21 conference calls starting in September, we had two further calls  
22 pending, one coming up to talk specifically with a gastro - GI  
23 proceduralist as we've talked to other societies and  
24 interventionalists. The next slide, in terms of the folks we

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1 talked to the committee activities, we had consultations and  
2 conversations and presentations from all the three accreditation  
3 organizations, the AAAASF, HHHC, and the Joint Commission who  
4 presented to us on their quality and safety requirements,  
5 accreditation procedures, findings and data that they might have  
6 had that might be useful or limited to us. We talked to a  
7 number of professional societies you see listed in there, the  
8 medical society, the OBS society, Society of Operating Nurses,  
9 Association of Radiologic and Imaging nurses, nurse  
10 anesthetists, anesthesiologists, the American Society of  
11 Diagnostic and Interventional Nephrology, Society of  
12 Interventional Radiologists, Society of Vascular Surgery; as I  
13 mentioned, we have an upcoming call to talk to  
14 gastroenterologists, the GI societies. We also in the interim  
15 as you may know performed additional focus analysis of the  
16 adverse events. All adverse events put a particular focus on  
17 deaths, and we've engaged (iprobe) to provide a second and  
18 external review starting with the 2014 deaths and going forward  
19 to help assure us that our evaluations are complete and  
20 accurate, our determinations look for rate of reliability, and  
21 to really provide additional information that may be useful to  
22 us in trying to detect patterns or issues that may signal things  
23 that are preventable that we could act on. We're also  
24 investigating pursuing the use of other data systems, includes

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1 using Medicaid data to look for potential reporting in various  
2 areas, there's the United States Renal Data System, there's the  
3 Anesthesia Quality Institute, and while none of these data  
4 sources provide all the answers or all the data that we would  
5 optimally want, they may provide some view or some additional  
6 insight may help us either put the information we have in  
7 context or understand various issues that are of importance to  
8 us. So our plan is to develop a report of the conclusions and  
9 some of our next steps which I'll talk about in a second.

10 The next slide, in terms of overall observations, think  
11 that data limitations which we've talked about I think with this  
12 group before, still remain significant for us. Those include  
13 just to recap a likely underreporting of adverse events, true  
14 for all data collection efforts and we heard this from all the  
15 associations and societies about what they see in terms of data  
16 that they collect. We did not have the experience of finding  
17 any organization that we felt was collect more complete or  
18 accurate or specific information than we are of the departmental  
19 organizations are collecting information that may be of  
20 interest. We remain having challenges of collecting the  
21 denominator of data so that limits our ability to look at rates  
22 of adverse events which are really critical, both in terms of  
23 valuating either providers or office-based surgery in general  
24 and being able to compare that for example, to other venues in

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1 which care is provided. We think the new legislation will help  
2 us get closer to being able to look at denominators and collect  
3 information on the number of procedures, and so that I think is  
4 positive and good news. And then significant data limitation  
5 for us and for the council and for others interested in these  
6 issues is the lack of any comparators, so the ability to be able  
7 to judge or evaluate what our safety issues or adverse events  
8 are any greater or lesser in office-based practices versus other  
9 settings or in New York versus other states. Right now, as of  
10 right now and despite our conversations with a number of  
11 different organizations the collect data are doing  
12 some of this work. We lack any clear comparators that help us  
13 put that information in context. Some of the other overall  
14 findings I think of interest is that while the accreditation  
15 requirements between the three organizations, significant amount  
16 of alignment, there are some issues around which they have  
17 including around adverse events. And so for example, some of the  
18 organizations require specific adverse events to be reported,  
19 that they, the accreditation organization names. Other  
20 organizations as practices to identify for themselves the  
21 adverse events that they think are important to track and report  
22 on those. So that's a pretty significant variation between the  
23 organizations. The other thing is clear to us, and I don't  
24 think this is unique to office-based surgery is that there are

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1 not identical one to one matches between specialty society  
2 standards and accreditation requirements. Very often part of  
3 this is accounted for by the fact that often times professional  
4 societies will have recommendations that don't quite meet the  
5 level of creation of a standard. So those are  
6 some of the general observations that we found over the course  
7 of many conversations and data exchanges, and meetings that we  
8 had both internally as well as talking to other relative  
9 associations.

10       The next slide is a little bit of a high level review of I  
11 think some of the major questions that we explored.  
12 It is not comprehensive but many of them in our four year data  
13 analysis                       cases from 2010 to 2013, so this is  
14 four years of data. Our focus was really to look at the deaths  
15 that were reported to see if we could identify patterns or  
16 issues that were hypotheses generated from the group of things  
17 that might've been preventable or consistent causes. One of the  
18 first things we looked at was question of whether this might be  
19 related to the procedure itself. We had all those four years,  
20 33 cases, 13 percent of all deaths were determined likely to be  
21 related to the OBS encounter so that still leaves about 2/23  
22 that were not. That less of those were events that happened  
23 actually on the day of the procedure. So remember that we  
24 collect information on deaths                       reported after 30



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1 days post procedure, and we have many instances in which  
2 following the procedure interventions or  
3 hospitalization or clinical events may happen. About 11, 33  
4 percent of related deaths were associated specifically with  
5 vascular procedures. Most of those focused on patients with end  
6 stage renal disease and as prior to last year the advisory group  
7 has been focused in looking on some of the issues that present  
8 themselves with respect to vascular procedures done on ESRD  
9 patients and try to understand what's going on, what might be  
10 preventable, and what sort of patterns may emerge. The other  
11 question from the group was whether this was related to the  
12 level of sedation, whether we could find evidence from our data  
13 that that might be contributory factor. I would just say that  
14 majority of these cases received moderate sedation or less. So,  
15 less clear what that specifically level of sedation was  
16 involved, but that 30 percent of the related deaths were  
17 assigned an ASA score of three. Whether this was related to the  
18 procedure was another hypothesis that we've been looking at.  
19 While the data on the lead is not perfect, the majority of the  
20 procedure, 2/3 or so last less than one hour, so again, this is  
21 an area that didn't appear to be significant at least based on  
22 the data that we saw. And then questions have been raised  
23 largely unanswered about the issues about the number or the  
24 types of personnel that are present or not present during the

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1 procedure in office-based settings, and as of right now, this is  
2 one of the pieces of data that we don't feel we can reliably  
3 report on or analyze. We don't collect this information the way  
4 that allows us to clearly evaluate whether the numbers or types  
5 of personnel that are present during the time is contributory or  
6 might be

7       So, the next slide are continued focused for all events for  
8 all types of events are in some of the things that we see are  
9 challenges related to limited documentation. We heard from some  
10 practices that some of the documentation may be related to  
11 questions or concerns about documenting issues related to  
12 quality measurement or quality improvement activities may be  
13 discoverable. We again, are optimistic that new legislation may  
14 help with some of that, those issues related to documentation.  
15 Patient selection clearly is still an issue which we're  
16 concerned and focused on. Staffing the credentials to perform  
17 various procedures and division of duties and procedure. Issues  
18 about patient monitoring come up, specifically the use of end  
19 stage title, CO2 or capnography and whether that should or  
20 should not be done. Again, this is one of the areas that we see  
21 some but not all the societies making recommendations about the  
22 use of this, but none of the associations have hard and fast  
23 standards relative to this. Issues about use of Propofol which  
24 have come up more frequently in GI procedures and potential

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1 relationship propofol to adverse events. And then clearly the  
2 capacity of practices, office-based practices to respond  
3 adequately to emergencies, the ability to rescue remains an  
4 issue of under conversation. Specifically for vascular events,  
5 there's some additional issues given the complexity of the  
6 patients, the number of physicians and specialists that are  
7 often involved. Sometimes the urgency, the need procedure is  
8 relative to vascular access. So care coordination, hand off  
9 communication, always an issue in healthcare related quality and  
10 safety, but we think a particular issue related to these  
11 patients and then I would say the use of sedation both for  
12 vascular and for other patients.

13 The next slide, in terms of our next steps, we see  
14 ourselves concluding in the next couple of months, adding  
15 deliberations of this ad-hoc time-limited committee focused on  
16 these adverse events, and that committee will make some  
17 recommendations. Those recommendations will go above to the  
18 larger advisory committee. Be happy to bring those  
19 recommendations forward to PHHPC as well. We want the larger  
20 advisory committee which we're looking at the membership and  
21 making sure that's updated appropriate for 2015 and beyond in  
22 terms of our task to the new legislation, we want that larger  
23 committee to review the recommendations and the findings, both  
24 of our detailed analysis of the data as well as our

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1 deliberations with the various accreditation organizations and  
2 societies, the conclusions that we come to in our findings,  
3 identify any recommendations that are actionable in the near and  
4 mid-term and then contribute to helping us identify those data  
5 elements which we want to collect from practices we think would  
6 be helpful in both understanding adverse events and as I  
7 mentioned, being able to prevent those events.

8       So I think that's the last slide, and I'm happy to conclude  
9 my presentation. Happy to answer questions and would invite - I  
10 see Gary's hand up, invite Gary to make any comments he might  
11 want on the process or the findings.

12

13       GARY KALKUT: Thank you. I think your report and the  
14 level of detail and breadth that we've covered in this group,  
15 you were covered in the report, reflects what has happened in  
16 this committee, and I think you and Nancy have done a great job  
17 in getting broad input and looking at data that is not unlike  
18 data we've seen in this council before that raises more  
19 questions, rarely answers questions, but we've looked at it in  
20 multiple dimensions and had been able to at least have a better  
21 understanding of it's limitations, the numerator and denominator  
22 you raise is a significant one, and there's also the question of  
23 how good the written documentation is. I think there's been a  
24 real focus on even without being able to establish rates, there

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1 are adverse events including death and what we need to focus on  
2 is actionable interventions that can reduce that, even if we  
3 can't get to a specific rate. Rates certainly would be helpful.  
4 And I think the way that this has been assembled and put  
5 together really is been a credit to how it's organized and at  
6 least giving us a chance to get to the best conclusions we can  
7 currently. So, it's been a pleasure to be on the committee. I  
8 look forward to contributing to the report that we send, and the  
9 conference calls are so interesting, and again, from the number  
10 of disciplines and number of agencies, societies that we've  
11 talked to, it's very hard to get work done during those  
12 conference calls. So, again, thanks for the report. - yeah,  
13 yes. I accept that, thank you. So let's move forward as you've  
14 described, and again, thanks for putting such a good process,  
15 comprehensive process together.

16

17 DR. GRANT: I just had a quick question; I'm wondering  
18 what role infections played in the report?

19

20 JO BOUFFORD: Do you hear that question?

21

22 DR. GRANT: Did you look at that? the role of  
23 infections?

24

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1           JO BOUFFORD:   Foster, the question was the role of  
2 infections in terms of the report.

3

4           FOSTER GESTIN: So, infections and iatrogenic infections are  
5 one of the adverse events that are reported. I think on that  
6 relatively                           in terms of the specific events, I  
7 think that you're asking about it's contributions, specifically,  
8 to some deaths and mortality.

9

10          DR. GRANT:       Yes. Yes.

11

12          NANCY AGARD:   The primary cause of death since the  
13 majority of the folks who die are end stage renal disease people  
14 who are pretty, a lot of comorbidities, the primary cause of  
15 death is cardiovascular related. Our infections that show up in  
16 each of the subspecialties when you look at adverse events, not  
17 just including deaths, they are also present in the vascular  
18 population which                   the group that dies most  
19 frequently. Infection is a very hard thing to track down in  
20 that particular population because of the fact that they are  
21 entering and exiting the healthcare system with such frequency  
22 in such a short period of time. Not unusual for us to be seeing  
23 these folks, they go to their dialysis center in the morning,  
24 they figure out that their access doesn't work, they're at the

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1 upstate surgery practice in the afternoon and they may go back  
2 that evening for their dialysis or the following morning. So,  
3 yes, infections do show up. They're something that's  
4 particularly hard to track down in the vascular population. It  
5 is something we are looking at.

6

7 DR. GRANT: Thank you.

8

9 JO BOUFFORD: Dr. Berliner.

10

11 HOWARD BERLINER: Do you have a sense of how  
12 comprehensive the reporting is that is both - are you getting  
13 reports from all the office-based, the regulated office-based  
14 surgery practices, and do you have a sense how much office-based  
15 surgery is going on that you know, should be regulated but  
16 isn't?

17

18 FOSTER GESTIN: I'll start - Nancy can fill in. I mean, we  
19 don't have an impression that there are lots of rogue practices  
20 out there that are performing office-based surgery that are not  
21 accredited. And that, based on years of not finding, not being  
22 reported, the numbers that we have seem to jive with what the  
23 accreditation organizations have in terms of members. I mean,  
24 it's hard to know what you don't know completely but I wouldn't

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1 say never, and impossible but it's not our sense that  
2 that's a big issue. Underreporting of adverse events is an  
3 issue. Again, the accreditation organizations putting the Joint  
4 Commission, were very frank in their sense that there's likely  
5 very significant underreporting of adverse events and how much  
6 of that is related to the challenge of a practice and  
7 performance of procedure today knowing that day 27 what happened  
8 to a person and whether they were in the hospital or had  
9 mortality and so on, I think that there are some legitimate  
10 challenges in being able to track adverse events that are not  
11 specifically focused on day of the procedure and there may be  
12 educational issues and so on, and then there's I think just the  
13 general barriers or unwillingness to report bad things that  
14 happened, whether it's an office-based surgery from hospitals or  
15 any but, Nancy do you have anything, any  
16 other ...

17

18 NANCY AGARD: I absolutely support what Foster said. The  
19 office-based surgery are private medical practices and in  
20 reality are not regulated by us. We sort of had this quasi-  
21 regulation vis-à-vis the accreditations agencies in requiring  
22 that they become accredited and the requirement for them to file  
23 adverse event reports, but they're not, they're not like the  
24 ambulatory surgery centers to the hospitals. The primary



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1 licensure oversight vehicle of the individual physician is the  
2 OPMC, so because it's a private practice. As far as adverse  
3 event reporting, our suspicion, our sense is that there's  
4 significant underreporting but what we don't, without  
5 denominators we have a hard time really getting a great handle  
6 on that. Looks like Gary wants to talk.

7

8 GARY KALKUT: I would just add that I think it is, felt  
9 that there is underreporting, or at least that's the sense of  
10 the group, but it's not just a quantitative numerical  
11 underreporting, it's the nature and the content of what's in  
12 those reports. There was an early interview in this process  
13 with one of the staff who reviews those reports and there are  
14 many where a conclusion just can't be drawn given the data. So  
15 there's two aspects to it and both I think have been addressed.

16

17 JO BOUFFORD: Foster, -- this is Jo Boufford - Foster you  
18 said that you can't compare across states, but I wondered if in  
19 your investigations you did identify any particular state or  
20 area that has what you would consider to be a good example of a  
21 system regulating an office-based surgery and what are the  
22 characteristics relative to what we're doing in New York or is  
23 it just unclear.

24

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1           FOSTER GESTIN: That's a great question Jo. And I can't say  
2 that we systematically looked across the states, but I know, and  
3 I'll let Nancy answer this, I know for many years we've looked  
4 to see what other states were doing in this space. I would say  
5 many of them have nothing specifically around regulation or  
6 citing office-based surgery at all, but Nancy, in the years  
7 leading up to this is there a state or a system..

8

9           NANCY AGARD: 2013 we looked at the 50 states because we  
10 were trying to look at what everybody else was doing in  
11 preparation for our own regulatory, statutory amendment  
12 initiative, and about half the states don't do anything, and of  
13 the states that do something only about 20 percent of them  
14 require adverse event reporting. Everybody defines things  
15 differently. Some states don't allow anything more than local  
16 anesthesia to be given in an office. Other states say the  
17 minute you get to above an ASA rescore you can only give  
18 moderate sedation, you can't give deep sedation or general  
19 anesthesia or that have, they define office-based surgery more  
20 like we define ambulatory surgery. So there really isn't a  
21 great, if you talk to the accrediting agencies, they think that  
22 we have the best system.

23

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1           FOSTER GESTIN: We as that the nation societies and  
2 associations if there's anything going on nationally that we  
3 should learn from or form our process, and unfortunately they  
4 didn't point us in any direction.

5  
6           JO BOUFFORD: Well, thank you very much. Any other  
7 questions or comments? Raises some real challenges in quality  
8 improvement. Systematic quality improvement.

9           Colleagues in Albany and let me move on to Dr. Birkhead who  
10 will present for the Office of Public Health.

11  
12           GUS BIRKHEAD: Thanks very much. I wanted to bring to the  
13 Council's attention two new data points that we have in looking  
14 at disease prevention broadly in the State. The two leading  
15 causes of preventable morbidity and mortality are smoking and  
16 physical inactivity and overweight. So earlier this week we  
17 announced continued success on the front of reducing smoking in  
18 the state. Our smoking rates and the Governor made this  
19 announcement drop to 7.3 percent for among high school students  
20 and 14.5 percent among adults generally well below the national  
21 average and the lowest points that we have seen in New York  
22 since we've been measuring tobacco use. So this is really a  
23 tremendous success. A tribute to a lot of work in the clinical

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1 sphere and also in the public health sphere to prevent youth  
2 smoking and to reduce and allow adults to quit smoking.

3       There's another data point which is not so good and that's  
4 our rate of adult obesity and after a number of years of fairly  
5 level rate of adult overweight and obesity we've in the last  
6 year have seen an increase again, mirroring what's been seen in  
7 other parts of the country as well. So, that particular public  
8 health problem remains a hard nut to crack, and I think we need  
9 to redouble our efforts and our thinking around how we approach  
10 that from both a clinical point of view and a policy point of  
11 view. Remained a pretty intractable problem. I will say though  
12 on the pediatric front and we measure this through our WIC  
13 program that we have had success in actually bending the curve  
14 in very young children up to age five through using the WIC  
15 program to encourage use of fresh fruits and vegetables and  
16 other sorts of things. So we do have at that end of the age  
17 spectrum have had some success but we need to go back and  
18 redouble our efforts I think in the adult area.

19       Just the one other thing totally unrelated I wanted to  
20 mention people have probably seen in the press reports of Middle  
21 Eastern respiratory syndrome cases occurring in Korea. There's  
22 an outbreak there in the healthcare system. Nosocomial or  
23 healthcare related transmission from a traveler who came back  
24 from the Middle East. MERS is a SARS like illness, can be quite

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1 severe. I think they've had nine deaths in Korea with over 100  
2 cases now reported. In the U.S. we had two imported cases in  
3 2014. None to date here, but I think this really causes us to  
4 really redouble our efforts in healthcare settings to  
5 particularly ask about travel history and that's been  
6 highlighted during the Ebola events, but I think that's asking  
7 about travel history should be a routine in any acute care  
8 setting and not specifically to any part of the world, but we  
9 have illnesses now that could be coming from anywhere and having  
10 clinicians and staff in acute care settings familiar with what's  
11 happening around the world, where diseases are happening and  
12 asking have you traveled in the last couple weeks I think is a  
13 very key message to get across. We're expecting CDC to come out  
14 with an updated alert around MERS in the next few days and we  
15 will then be putting out a broad alert to the healthcare system  
16 in the State making a number of points, but that being a primary  
17 one. So, more to come, or hopefully not more to come on that,  
18 but we do need to, at this point in the modern world we're just  
19 a plane ride away from almost any disease you can imagine and so  
20 getting a travel history is really the entrance point to the  
21 healthcare system taking the precautions that are needed to  
22 prevent transmission in the hospital and to get the patient  
23 quickly diagnosed and on appropriate treatment.

24 So those are the points I wanted to raise today. Thanks.

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JO BOUFFORD: Dr. Birkhead.

Alright. Then lets move on to Dr. Rugge, Chair of the Health Planning Committee for his report. I have evidence here I'm going to pass it down to Colleen that my earlier script, and I showed it to him to prove that -

JOHN RUGGE: Thank you so much for this opportunity.

JO BOUFFORD: You're so welcome, always.

JOHN RUGGE: By way of historical recap I'm sure everyone remembers how we, as a planning committee and a council suffered through a comprehensive review of CON and an updating of that process followed over another year and a half by looking at the spectrum of episodic care ranging from full service EDs to off-campus EDs to part-time off campus EDs to urgent care and extending to retail clinics. We, again, made a comprehensive set of recommendations and on the executive side had a perfect score. On the legislative side we have had a no-hitter. But the legislature continues to meet and so there's always ground for hope. During the last 15 months we have taken a well deserved rest, but during that time I think we're seeing a proposed transformation of the health delivery system like never

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1 before. One fueled by DSRIP with the major metric being how to  
2 reduce avoidable hospitalizations associated ED visits by 25  
3 percent over the next five years. In no small part with that in  
4 mind are now looking at a dual kind of focus. One being  
5 prompted by the fact that by the end of 2016 there's a statutory  
6 requirement that we as a council update the bed need methodology  
7 for long term care. This itself is a complex issue with  
8 multiple type of beds but even more complex by the fact that I  
9 think we're seeing integration of, in a dynamic kind of process  
10 between bedded services and community services in a way that no  
11 one expected migration of people out of nursing homes into  
12 community bed settings. But a need for flexibility for  
13 accommodation of rehab beds, high acute long term care beds,  
14 It may defy prediction through a conventional methodology,  
15 and I think that by looking at bed need methodology will be open  
16 up the whole arena of how do we protect post-acute care services  
17 at a time when we're trying to reduce acute care, and yet face a  
18 state with enormous diversity in terms of urban versus rural  
19 populations, communities with very different payer mix, and very  
20 different expectations. So that this is no small undertaking  
21 and one that is both arithmetically complex but also defies any  
22 kind of simple arithmetic at all. In addition, there's another  
23 focus, we are clearly aware that avoidable hospitalizations is  
24 not a problem for everyone. In fact, it's primarily a problem

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1 for people with very complex interlocking dual diagnoses. Be  
2 they related substance abuse or mental health issues combined  
3 with medical issues. And with that in mind are looking at  
4 especially through the DSRIP process and the regulatory waivers  
5 have been extended for merging and morphing services across  
6 sectors and across agencies at, once again, integration. This  
7 time integration of behavioral health with primary care and  
8 medical issues. Understanding that there are a variety of roots  
9 toward integration and merging models that are being allowed  
10 through time-limited waivers have been extended by the  
11 legislature and the Department to the PPS, 25 PPSs around the  
12 State. There will be a need to understand which are working and  
13 extend this council into permanent not waivers but permanent  
14 adjustments in the regulatory system. I think in awareness on  
15 the part of the committee that we cannot look to the regulatory  
16 system inspiring or incenting change, but instead must be used  
17 to support the kind of initiatives that are being undertaken in  
18 the field. With us yesterday we had a committee meeting to open  
19 up the issues and were favored by the attendance of Dr. Seterer  
20 of OMH as well as by leadership with Dan Sheppard and staff from  
21 DOH and I think is a nice example of how we're now extending our  
22 reach from one department to indeed all of state government to  
23 address issues that are of paramount importance in terms of  
24 being able to and succeed in the transformation



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1 that are being proposed. So we expect to be back in a year-and-  
2 a-half - actually less than that. The schedule is front-loaded  
3 so that the principle work and attention over these next few  
4 months will be on the side of the long term care issues and the  
5 bed need methodology, so no later than January of next year, our  
6 policy recommendations are in place so that the Department can  
7 proceed with the technical changes based upon those policy  
8 insights that we as a committee and a council hope to generate.  
9 Concurrently we'll be looking at BHS primary care intervention,  
10 especially to my mind looking across the state at those models  
11 which seem to be working and taking effect and then go full bore  
12 beginning early next year to understanding of how we need to  
13 adjust the waiver process. So, fasten your seatbelts and all  
14 that. Thank you.

15

16 JO BOUFFORD: Questions for John? I'd like to raise the  
17 question maybe having something added to your, at least, agenda  
18 that we would be tracking is I think this development of  
19 advanced primary care and the stages of advanced primary care  
20 and the stages of advanced primary care, again, open up the  
21 question of the physician practice which came out  
22 very clearly in a lot of the discussions you had in terms of  
23 figuring out how to define these various forms that have taken  
24 route across the State, and it just seems to me all of that

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1 really is part of a piece, and we really have to keep it in our  
2 sites, what you've tried to do where it may or may not be moving  
3 with the legislature and then how to think about them together  
4 conceptually.

5

6 JOHN RUGGE: Absolutely. Excellent point. The  
7 integration of behavioral health primary care can really only be  
8 done through advance primary care. I mean, there's no way to  
9 integrate a conventional or old fashioned primary care practice  
10 because that practice is so consumed with the business of doing  
11 what's always done. And here we are trying to break the mold  
12 and do something very different, so, that is yet another aspect  
13 of what it means. I think at the heart of advanced primary care  
14 is advancing from conventional medical diagnosis to a look at  
15 the whole person and including behavioral and psychological  
16 issues in a very comprehensive way.

17

18 JO BOUFFORD: Well, and I think we're also hoping that the  
19 population health perspective, looking at other determinants of  
20 health for the most advanced stages of primary care will be part  
21 of what gets defined, so this whole look at this sort of  
22 evolution of more advanced definitions of obligation and  
23 responsibility.

24

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1           JOHN RUGGE:       So you really are trying to sink our boat.

2

3           JO BOUFFORD:     No, no, no! As usual we as a Prevention  
4 Agenda population health will toil away looking at how to put  
5 that in, but seriously I think that to the degree these are all  
6 happening, these are developing at the same time and you're  
7 going to be taking a look like that I think it'd be helpful in  
8 thinking about how to make sure they're aligned with what's  
9 emerging from the APC definitional process.

10

11          JOHN RUGGE:     I think that's absolutely right. And as you  
12 start with any of these key issues that quickly expand and  
13 everything else, I mean for one the regulation of these new  
14 models is only going to have any meaning if there's also  
15 reimbursement of these new models, and so at the same time we're  
16 looking at how to categorize and how to promote the behavior. I  
17 think we're going to have to look at what is the appropriate  
18 financial support necessary to affect them across the State and  
19 I would content that validity is better prepared or better  
20 situated or better populated than this council, because we do  
21 have, indeed, representatives and experts from each of these  
22 fields and many of us are living the life and are experiencing  
23 it firsthand. And so this is my plea to the Department and to  
24 the executive to support the effort and to help us to succeed in

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1 getting our arms around some very, very difficult questions that  
2 are hard to do, and I think that the PHHPC has an important role  
3 that it can play.

4

5 JO BOUFFORD: Mr. Robinson.

6

7 PETER ROBINSON: So, actually Dr. Ruge, I'm going to  
8 direct this question as a followup to your comment to whoever in  
9 the Department might appropriately answer it, but the  
10 recommendations that came out on episodic care that Dr. Ruge  
11 referred to earlier. Where does the Department and the  
12 executive stand on this? I mean, it's unclear whether there's  
13 really been a strong push to move this through the legislature  
14 or for reasons that are perhaps beyond the purview of this  
15 council it's not something that's a high enough priority at this  
16 point to push, but is there a plan to move this forward? Or are  
17 we going to live with the status quo for a while longer?

18

19 LISA ULMAN: Hi, it's Lisa Ulman with the Department. I  
20 think Dr. Ruge had mentioned those matters which were  
21 administrative in nature have or are well underway  
22 for those legislative components. I think that they were very  
23 much high priority for the Department and for the executive.  
24 That's evidenced by the fact that they were in the executive

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1 budget. I do think we have to step back and regroup and see  
2 where we are at this stage, but we continue to believe that  
3 those were very important items, and we do want to step back and  
4 take a look at where we are and see where we go next. So, I  
5 think we'll have to follow up with you on that, but they are  
6 very important items to us.

7

8 JOHN RUGGE: One suggestion Lisa, is members of the  
9 council have never themselves been mobilized by the Department  
10 to try to explain the rationale and if anything to explain how  
11 more relevant or important they may be now than even two years  
12 ago or a year and a half ago when we came out, the number of  
13 retail clinics, the proliferation of urgent care clinics, the  
14 number of out of state providers coming in suggest that we were  
15 prescient in terms of considering the issues and before the cat  
16 is entirely out of the bag this would be a good time to go back  
17 and make a full core press.

18

19 JO BOUFFORD: Mr. Robinson Ms. Hines.

20

21 VICKY HINES: Just to comment on the long term care  
22 challenge and the analysis, I agree with you. I  
23 think it might defy prediction. But I think one of the things I  
24 would just encourage the group to think about are the unique

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1 workforce challenges that I think are different from region to  
2 region so our ability to continue to move folks out of  
3 residential and facility-based settings is really often  
4 dependent on whether or not there are sufficient numbers of both  
5 paid and unpaid caregivers, and I think in certain parts of the  
6 State that is a huge challenge. So I just encourage that that  
7 piece be an integral part of your planning.

8

9         JOHN RUGGE:         And one more plea, last time around I know  
10 the planning committee was successful in no small part because a  
11 number of people who were not originally on the committee  
12 decided to join in. At this point I think we have some real  
13 contributors on the council who have not yet been a part of the  
14 committee and I'm hoping that Mr. Kraut would be open to  
15 expanding the membership of the committee. We could really use  
16 the help and the force of arms we have here. Great.

17

18         JO BOUFFORD:         If I could just, the magic word 'workforce'  
19 came up, so I just wanted to raise the issue similarly in the  
20 area of primary care. I know, I think it's one of the  
21 committees that's supposed to be put together, and again, it  
22 deserves attention or perhaps we can get an update on the plans  
23 for that. Jeff and I have talked a little bit about trying to  
24 have sort of regular updates on the many of the moving parts

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1 around reform for the members of the council as we do our work  
2 along the lines of what John's talked about, but I think this  
3 workforce issue is a really important one for long term care as  
4 well as for primary care.

5 Did you have another? Did you have any? Any other  
6 comments, questions for John? OK. Thank you very much. Thank  
7 you colleagues in Albany. And we now move on to Dr. Gutierrez  
8 on committee on Codes, Regulations, and Legislation.

9

10 ANGEL GUTIERREZ: Thank you Dr. Boufford. Good morning.  
11 My name is Angel Gutierrez, I'm chair of the Codes, Regulations,  
12 and Legislation Committee. We met on May 21 to review one  
13 proposed regulation which was presented for information. It  
14 dealt with computer tomography quality assurance. The proposed  
15 regulations will amend part 16 of 10NYCRR ionizing radiation to  
16 include requirements with the use of computer tomography CT or  
17 CAT on humans within New York State including New York City.  
18 The New York City Department of Health and Mental Hygiene  
19 regulates the use of ionizing radiation within the five  
20 boroughs. This proposed regulation will provide quality  
21 assurance and safety standards that directly address CT physical  
22 and operational parameters. The proposed regulation would also  
23 require accreditation by a nationally recognized accrediting  
24 body - come on computer - that is acceptable to the Department

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1 which would be consistent with the accrediting bodies at the  
2 Center for Medicare and Medicaid Services accepts. At the  
3 meeting committee members discussed the utility and practicality  
4 of documenting and sharing dosage information with patients and  
5 how such a requirement would fit into this proposal or a  
6 proposal in the future. The Department indicated that the  
7 preference was to move forward with the current regulatory  
8 proposal but will consider the issue further during the public  
9 comment period as suggested by the committee. This proposal was  
10 published in the state register on May 6, 2015 and is currently  
11 in the later part of the 45 comment period. Since this was  
12 before the committee for information. Mr. Damiani from the  
13 Department of Health is available to answer any questions from  
14 the council members in Albany.

15

16 JO BOUFFORD: Any questions about this? Alright. Lets  
17 move on then. And over to Mr. Robinson and the Committee on  
18 Establishment and Project Review.

19

20 PETER ROBINSON: Thank you Dr. Boufford. As Dr.  
21 Boufford mentioned, we are going to go through this calendar in  
22 batches and committee members if, council members if any of you  
23 do want to pull anything out even at the last minute, please  
24 signal your interest in doing that and we'll be glad to do it.



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1           Broadly the applications will be in one large set of  
2 batches, one batch on construction and then a series of  
3 categories under establishment and construction. So we'll get  
4 right into it and by putting on my glasses so I can see what I'm  
5 doing. And, begin by introducing application 142231C, Charles  
6 T. Citron Healthcare Center, Inc., in Oneida County. The  
7 application is to certify 32 additional RHCF beds to develop a  
8 specialty unit for individuals with neurological disorders.  
9 Both the Department and the Committee recommend approval with  
10 conditions and contingencies, and I so move.

11

12           JO BOUFFORD:     All in favor?

13           [Aye]

14

15           PETER ROBINSON:     Thank you. We are now done with  
16 construction and on to establishment and we'll begin with  
17 category one; first with applications for dialysis services.  
18 151005E, Vestal Healthcare II, LLC in Broome County which  
19 establishes Vestal Healthcare II, LLC as the operator of a renal  
20 dialysis diagnostic and treatment center, and two dialysis  
21 extension clinics currently operated by Vestal Healthcare LLC.  
22 That application was recommended for approval by the Department  
23 with conditions and contingencies as well as the Committee. In  
24 addition we have an application for residential healthcare

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1 facilities to establish 142102E, NHRC Acquisition LLC d/b/a  
2 Humbolt House Rehabilitation and Nursing Center in Erie County.  
3 And this is to establish NHRC Acquisition LLC as the new  
4 operator of the facility located at 64 Hagar Street, Buffalo  
5 that is currently operated by Niagara Lutheran Home and  
6 Rehabilitation Center. Here again, both the Department and the  
7 Committee recommend approval with conditions and contingencies.

8 Application 142221E, Newfane Operations LLC, d/b/a Newfane  
9 Rehabilitation and Healthcare Center in Niagara County, and this  
10 is to establish Newfane Operations LLC as the new operator of  
11 Newfane Rehab and Healthcare Center which is located on 2709  
12 Transit Road in Newfane, and that application results in  
13 reduction of 10 certified beds. Again, the Department and the  
14 Committee recommend approval with conditions and contingencies.

15 Also application 151026E, Katterskill Operating LLC d/b/a Green  
16 Meadows Nursing and Rehabilitation Center in Green County, and  
17 this established Katterskill Operating LLC as the new operator  
18 of the facility which is located at 161 Jefferson Heights in  
19 Catskill and that's currently operated at Katterskill Care  
20 Skilled Nursing and Rehab. Once again, Department and Committee  
21 recommend approval with conditions and contingencies. And the  
22 last one in this batch is 151083E, Allure SJA LLC, d/b/a St.  
23 Joachim and Anne Nursing in Kings County. And this is to  
24 establish Allure SJA LLC as the new operator of the 200 bed

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1 facility located at 2720 Surf Avenue in Brooklyn. Once again  
2 Department and Committee recommend approval with conditions and  
3 contingencies, and I move that batch.

4

5 JO BOUFFORD: Any discussion? Yes, Charles.

6

7 CHARLIE ABEL: Just one note on, this is on 142102, Humbolt  
8 House, Jeff Kraut had asked for information on the use sale of  
9 proceeds. A letter was sent to PHHPC members related to that  
10 and from the Department's perspective it looks appropriate.  
11 Just wanted to bring that to everyone's attention.

12

13 JO BOUFFORD: OK, any other questions, concerns, comments?  
14 All in favor?

15 [Aye]

16 Opposed? OK. Motion has passed.

17

18 PETER ROBINSON: Thank you. We now have a series of  
19 certificates. The first is certificate of incorporation for  
20 Cuba Memorial Hospital Foundation Inc., for fundraising. The  
21 second a certificate of incorporation for the Osbourne  
22 Foundation, also for fundraising. A certificate of  
23 incorporation for the Brookdale Health System Foundation also  
24 for fundraising. A certificate of amendment of the certificate

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1 of incorporation for ECMC Lifeline Foundation, Inc., that is a  
2 name change, and a certificate of dissolution for Threshold  
3 Center for Alternative Use Services Inc. All of these are  
4 recommended for approval both by the Health Department and the  
5 Committee.

6

7 JO BOUFFORD: Motion for approval? Second? Any comments?  
8 Concerns? All in favor?

9 [Aye]

10 Opposed? Motion is passed.

11

12 PETER ROBINSON: This is the second category in this  
13 larger batch and this is an application which is recommended for  
14 approval, but with a council member's recusal, in this case Dr.  
15 Martin.

16 Dr. Martin has left the room, and this is a restated  
17 certificate of incorporation for the Mt. Sinai Medical Center  
18 Inc. It amends the corporate purposes to reflect fundraising for  
19 four hospitals. We noted Dr. Martin's recusal and his  
20 departure, and this has the Department's and the Committee's  
21 recommendation for approval, and I so move.

22 [Second]

23

24 JO BOUFFORD: Any discussion? Comments? All in favor?

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1 [Aye]

2 Opposed? No, Ok. Approved.

3

4 PETER ROBINSON: Ok. Welcome back. This next batch  
5 also involved applications recommended for approval and I will  
6 go through this first set of, this is home health agency  
7 licensures and I will merely read the numbers of each of the  
8 licenses here, and then run through motions. So, be patient.

9 2228L, 2336L, 2400L, 2160L, 2302L. 1724L, 2333L, 2454L,  
10 2210L, 2282L, 2418L, 2344L, 2384L, 2361L, 2305L, 2307L, 2396L,  
11 2394L. 2450L, 2192L, 2594L, 2388L, 2374L, 2306L, 2434L, 2445L,  
12 2203L, 2126L, 2329L, 2399L, 2430L, 2595L, 2597L, 2601L, 2607L,  
13 2615L, 2568L, 2552L, 2190L, and 2451L. And this recommendation  
14 comes with approval with a contingency from the Department. The  
15 committee level, it was approval with a contingency that was  
16 recommended similar to the Department's but with one member  
17 abstaining. I believe that was Ms. Hines. And I make the  
18 motion to approve these applications.

19

20 JO BOUFFORD: Alright. Is there any discussion for this  
21 group of applications? OK. All in favor?

22 [Aye]

23 Opposed? No. The groups pass. Ms. Hines abstains.

24

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1           PETER ROBINSON:       This next category includes two  
2 applications but I think I'm going to take them individually  
3 because we have an interest in one and a conflict and recusal in  
4 the other. So let me first bring up Home Health Licensure  
5 2270L, Caring Hearts of Rochest, LLC, doing business in Monroe,  
6 and Wayne Counties with an interest declared by Ms. Hines, and I  
7 recommend this for approval as does the Department and the  
8 Committee.

9

10          JO BOUFFORD:    Any discussion of this item? Any comments?  
11 All in favor?

12          [Aye]

13          Opposed? Motion carries.

14

15          PETER ROBINSON:       So Ms. Carver-Cheney -

16

17          JO BOUFFORD:    Ms. Hines is abstaining.

18

19          PETER ROBINSON:       Ms. Carver-Cheney is a recusal for this  
20 application.

21

22          JO BOUFFORD:    Yeah, you leave the room. That's great.

23

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1           PETER ROBINSON:        You're not alone.  It happens to  
2 everybody.  Only the best.  Correct.

3           OK.  So this is application 2177L, NYC Home Healthcare LLC,  
4 doing business in Kings, Queens, New York, Bronx, and Richmond  
5 Counties.  We know the conflict and recusal by Ms. Carver-  
6 Cheney.  The Department recommends approval with contingency and  
7 the committee does as well with again one member abstaining.  
8 And I so move.

9           [Second]

10

11          JO BOUFFORD:        Any comments?  Discussion of this item?  OK.  
12 All in favor?

13

14          [Aye]

15          Opposed?  Any opposed?  And recusal by Ms Hines  
16 (abstention) I'm sorry.  Abstain.  She's still here.  Thank you  
17 very much.  Motion carries.

18

19          PETER ROBINSON:        So with that very exciting process now  
20 concluded I turn the next part of the report over to Dr. Kalkut  
21 and both Ms. Hines and I will recuse ourselves from the next  
22 item.

23

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1           GARY KALKUT:    Thank you. Ms. Hines and Mr. Robinson are  
2 leaving the room. This is an application for ambulatory surgery  
3 centers. 151008B, Pittsford Pain Center LLC, in Monroe County.  
4 This is to establish and construct a single specialty ambulatory  
5 surgery center for pain management services at 727 Linden Avenue  
6 in Pittsford. The Department recommended approval with  
7 conditions and contingencies and an expiration of the operating  
8 certificate five years from the date of issuance. The  
9 establishment and project review council made no recommendation  
10 on this meaning not approved, not disapproved with two members  
11 abstaining. And I'll turn it over to Mr. Abel to discuss the  
12 considerations that the project review committee and how the  
13 Department has approached this.

14

15           CHARLIE ABEL: Thank you. So, this is an ambulatory surgery  
16 center application for brand new center specializing in pain  
17 management, and the facility falls within the Finger Lakes HSA  
18 planning region. And a statute requires that an HSA, and the  
19 Finger Lakes is the only one that is active, has, it is the  
20 responsibility of PHHPC and the commissioner to take into  
21 consideration the HSA recommendation. And while we, the  
22 Department, is recommending approval because the application  
23 meets the statutory review criteria for CON approvals, HSA,  
24 Finger Lakes HSA has recommended disapproval, and disapproval



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1 based on need. The need - we had worked with an discussed with  
2 the HSA prior to bringing this to the committee meeting and the  
3 HSA made a very good presentation at the committee meeting in  
4 support of it's disapproval. And we completely respect the  
5 HSA's position and the real reason for the disjoint which is  
6 very rare, you know, we do take into consideration the HSA's  
7 recommendation in our analysis, and it is very rare that we  
8 disagree, but the basis for the disagreement is that the need  
9 methodology that the Department is required to use is concerns  
10 different criteria, it involves different criteria than the HSA  
11 and in fact, the HSA can use whatever criteria - its not bound  
12 by the regulations as we are. And in the regulations for need  
13 as they exist in the ASC, for ASCs, and we've discussed this  
14 periodically over the years because of the sensitivity of  
15 ambulatory surgery center applications that come before this  
16 council and the predecessor council, is not population-based,  
17 it's not comparative, doesn't require a comparison of existing  
18 providers. It is really, it really boils down to has the  
19 applicant demonstrated that the surgeons to perform surgeries at  
20 this center that they have sufficient experience and their  
21 utilization projections are sufficient such that the revenues  
22 derived from those procedures would be sufficient to offset the  
23 ambulatory surgery centers expenses. That was changed from a  
24 population-based need methodology back in 1998 because at the

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1 time New York State had very few ambulatory surgery centers and  
2 it was believed that the regulations were overly restrictive,  
3 and by comparison with other large states we clearly had very  
4 very few. We had less than 50 ambulatory surgery centers at the  
5 time. We still have, despite all the ambulatory surgery centers  
6 that have come before this council and probably contrary to some  
7 beliefs out there, we have relatively few ambulatory surgery  
8 centers in operation now. We 140 across the  
9 state. We do have a number in the pipeline that they're  
10 resolving contingencies, they may be under construction and the  
11 like, but you know, one could argue that we still want to  
12 encourage even in the DSRIP world ambulatory surgery centers  
13 that are freestanding separate and apart from hospitals. We  
14 clearly want to be sure that more complex surgery procedures are  
15 being done in a regulated setting rather than office-based  
16 surgery. We recognize office-based surgery has a place in the  
17 healthcare spectrum and clearly hospitals do. The basis for the  
18 HSA disapproval is just to summarize real quick and I won't  
19 overly make their point because you've got documents in front of  
20 you, but they, the HSA has said that these pain management  
21 services are available currently in hospitals in the region and  
22 in office-based surgery settings. Office-based surgery  
23 settings, non-certified settings. We don't dispute that  
24 information. We are, 'we' the Department is bound by the

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1 statutory criteria as it exists and the statutory criteria for  
2 need and character and competence and financial feasibility are  
3 met with this application. That being said, it's been since 1998  
4 we've had this need methodology on the books, and this year  
5 we've committed to review all of our need methodologies to  
6 consider what needs updating and does not need updating, and  
7 we've heard Dr. Rugge and we are very committed to working with  
8 the planning committee to bring through this body updates on  
9 need methodologies, released reassessments of the need  
10 methodologies for nursing home need methodology, hospice, CHHAs.  
11 We know that just from the periodic questions related to  
12 ambulatory surgery center need methodology, we want to be able  
13 to look at that. And so, you know, we are committed to do so.  
14 We have a full plate. I think we probably have most pressing is  
15 the nursing home need methodology and so ambulatory surgery  
16 centers from our perspective has not yet created a pressing  
17 problem that should get bumped up before some of the other need  
18 methodologies. Still, we're going to do what we can to run  
19 parallel processes on all of these things.

20 So we are content. 'We' the Department. We are satisfied  
21 with our review of this project. We are content to continue to  
22 recommend approval of this project. We believe that the  
23 applicant has demonstrated that it deserves an approval by  
24 virtue of all of the CON review criteria for ambulatory surgery

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1 centers, and we present this project for your consideration with  
2 our approval.

3

4 JO BOUFFORD: Thank you. Dr. Kalkut, I'd like to have a  
5 few moments for people, members of the committee to speak if  
6 they'd wish.

7

8 GARY KALKUT: Sure. I'd just like to make a motion to  
9 approve before questioning and then we can go

10

11 JO BOUFFORD: Is there a second? Thank you. Fine. All in  
12 favor. So we'll have the discussion now. So are there members  
13 or questions from the council or other members of the committee?  
14 I'm advised that we have 14 council members present and we need  
15 13 to vote. The abstention question is an issue. So let's talk  
16 about what we need to talk about. Mr. Fassler.

17

18 MICHAEL FASSLER: Just a question for the Department.  
19 And again, in this case, we have physicians moving  
20 from office-based to surgery center. In the Department's view,  
21 is a pain procedure more appropriate in a surgery center versus  
22 office center? Office-based. That was one of the reasons you  
23 want to move in that direction.

24

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1 CHARLIE ABEL: I'll - I know Chris has a comment on this  
2 but I'm going to say it really depends upon the nature of the  
3 service that's being provided. You're going to have certain  
4 procedures that are more invasive than other procedures with  
5 respect to managing pain and it's really up to the physicians  
6 discretion and professional judgement as to what setting is best  
7 for the procedure. At the establishment and project review  
8 committee the applicant I think made some comments specific to  
9 that where the extra precautionary conditions and safety,  
10 patient safety conditions that are present in an ambulatory  
11 surgery center were a consideration in some of the procedures  
12 and where they should be performed.

13

14 CHRIS DELKER: Yeah, I think further to Mr. Fassler's  
15 question, we really can't get into the business of deciding the  
16 setting that's appropriate for any am-surg procedure. That  
17 would just be almost regulating medical practice in a way. What  
18 we go by is are the procedures being proposed considered  
19 surgical, usually by Medicaid and Medicare and the majority of  
20 pain management procedures being proposed by this applicant are  
21 reimbursed by Medicaid under the products of ambulatory surgery.  
22 So that's generally what we use as a guide and occasionally we  
23 ask for medical input as well from you know, experts we might  
24 find on this council or elsewhere.

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1

2           JO BOUFFORD:    The members of the committee might wish to  
3 comment. We had abstentions from Dr. Brown and Dr. Martin. I  
4 don't know if you'd like to talk or what your thoughts are about  
5 this.

6

7           LAWRENCE BROWN:    THank you very much. Lawrence Brown,  
8 first time speaking today. That's an accomplishment, I must  
9 confess. I guess the thing for me was the conflict, and I  
10 appreciate the Department sharing and providing clarity with  
11 respect to it and I certainly can understand that two well  
12 meaning and well informed entities may come to different  
13 decisions with respect to an application. And that to me was I  
14 must confess one of the things that was somewhat troubling. In  
15 a way, I guess partly from Brooklyn, I'm a community man and I  
16 tend to give favor to local issues and local guidance, but then  
17 I do understand the State has a responsibility to in fact look  
18 at all the citizens in the State of New York. So I appreciate  
19 that view too. I was really mixed on that basis. I think I am  
20 clearer now, so I will not have an abstention next time.

21

22           JO BOUFFORD:    Dr. Martin, would you like to comment?

23

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1           GLENN MARTIN: So, I mean, I was conflicted because I,  
2 again, I was sort of deferring to the people who were on the  
3 ground locally and know what they're doing and actually are one  
4 of the, seem very confident, have a long history of doing this,  
5 did a good analysis and the like. I also understand the  
6 constraints of what the State's operating under when they have  
7 to make these recommendations. I have to say though that I  
8 suspect I'm going to vote in favor of it if only because I'm  
9 kind of - well, one because I kind of think I've got to, and  
10 two, I am intrigued to see whether or not that group has the  
11 clout they think they do in terms of the insurers and major  
12 players because they basically think they're going to make it  
13 financially infeasible if they do it. So it's one of those rare  
14 situations where the market might actually be intriguing to  
15 watch. So it might be a public health experiment in my eye,  
16 which would not be a good point to vote for it, but the fact is  
17 I think they do meet the statutory requirements to allow it to  
18 be established with all due difference to the excellent analysis  
19 and probably the more accurate analysis being done by the folks  
20 in that health planning agency.

21

22           JO BOUFFORD: Dr. Kalkut.

23

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1           GARY KALKUT:    Yeah, the outcome on a policy basis of  
2 relooking at a need methodology that is 17 years old I think is  
3 a very important piece of this and the individual again caught  
4 in that circumstance right now I think is another point, but  
5 that to me is the larger issue.

6

7           JO BOUFFORD:    I think we are, we are to take the advice of  
8 the local HSA but not be bound by it, so obviously the state  
9 statute would presumably be primary, is that right counsel? In  
10 terms of our actions?

11

12          JIM DERING:     Correct. We're operating under the state  
13 statute and our regulations.

14

15          JO BOUFFORD:    Any other questions or comments on this?  
16 Yes, Dr. Rugge.

17

18          JOHN RUGGE:     I think this is one of those cases where  
19 difficult cases make either good or bad law, but I think the  
20 committee discussion does several things. One is that the  
21 standard for financial feasibility has really become irrelevant  
22 in we're dealing with a broken kind of regulatory structure, in  
23 this case, one that's least irrelevant. Another key point was  
24 that clearly there is discretionary prerogative for this council



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1 to make a binding decision based upon the fourth criteria that  
2 being 'other.' And to my mind what this boils down to is there  
3 clearly seems to be a sufficient capacity within the community.  
4 The argument of the applicant is that capacity has splintered  
5 among multiple institutions and we'd have doctors going from  
6 hither to thither in order to meet the needs of their patients.  
7 on the other hand in the office-based setting, they were already  
8 able to do that service, and so it's unclear as to why they need  
9 to go hither to, they're already doing it. And then finally  
10 financial feasibility may boil down to whether indeed the Finger  
11 Lakes process will preclude insurance reimbursement making all  
12 this moot. Based on that, my feeling is to support the  
13 judgement of the HSA and that they are on the ground, they are  
14 local, they know the community, they're dealing with both payers  
15 and providers, and I don't think that we as a statewide entity  
16 have the need to override that local judgment.

17

18 JO BOUFFORD: Is there any issue about us going in that  
19 direction? That was the nature of my question was, is that an  
20 option available to us?

21

22 JIM DERING: I think the HSA recommendation is just that, a  
23 recommendation, and as Charlie has outlined in his memo, the  
24 recommendation is inconsistent with our statute and our process

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1 respectfully so. So, members are free to vote up or down, but I  
2 think we should really follow our state process.

3

4 JO BOUFFORD: Hopefully. Any other questions or comments?  
5 Alright. All in favor? Should we have our hands raised? All in  
6 favor of the motion raise their hands? Any opposed? OK. We have  
7 a - any abstentions? Continuing abstentions? OK. Doesn't pass.  
8 13 affirmative. So it doesn't pass. So, what does that mean  
9 exactly at this point then.

10

11 GARY KALKUT: Is there another motion? Does anyone on the  
12 council, would that be the next step?

13

14 JO BOUFFORD: OK. Dr. Martin.

15

16 GLENN MARTIN: I believe the proper thing is to unlimbo it  
17 would be to make a motion to disapprove the motion.

18

19 JIM DERING: Could I speak on that for a second? So, in  
20 terms of the unlimboing an application, it seems to be something  
21 that's occurring you know, lately. It's happened two times.  
22 Prior to that it happened, it hadn't happened for about 10 years  
23 I think. Just want to throw out one consideration and I don't  
24 know if the program folks want to speak to it. One option with

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1 this is bringing it back another time when there are more  
2 members here. I'm just concerned about the frequency, the  
3 unlimboing is certainly a good tool, you know, if there's going  
4 to be you know, if the council won't be able to reach a decision  
5 up or down. I'm just concerned with regard to how many matters  
6 or potentially sent to hearing and the resource issues in  
7 connection with that. So if I could—

8

9 CHARLIE ABEL: Yeah, I think Jim expressed the concern  
10 pretty well. It's - disapproving a project just to allow it to  
11 go to fair hearing I'm not sure is a good strategy. The, and we  
12 certainly can with, actually if you do nothing further in terms  
13 of motions or votes, as no recommendation, we in all likelihood  
14 would bring this back next cycle. Although we would appreciate  
15 from the group if there is additional information that you  
16 believe would be helpful in order to make an informed decision,  
17 I'd be happy to hear that so that we can reach out to the  
18 applicant and do that. I shouldn't say, just so that everyone  
19 understands as part of the process, if this project was approved  
20 by PHHPC, granted we don't have a full complement of PHHPC  
21 members today, but either today or some other future date, the  
22 HSA does have article 78 hearing rights. They can request a  
23 hearing on their own if they feel so strongly about this  
24 project. And the - and I, at it's very core this gets more

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1 personal than from the Department's perspective. You know, for  
2 folks who believe that the project should be approved to vote  
3 for disapproval, if that's the alternative motion, just to move  
4 the project along the process, to me doesn't feel right.

5

6 JO BOUFFORD: I wonder if I could suggest, I just was  
7 getting the numbers, so the vote here was 11-3. We need 13 to  
8 be definitive in one way or another, and we have six individuals  
9 absent. So, I'm going to suggest if we wait until the next  
10 cycle and why wouldn't that be the case. I don't know what we  
11 have to do officially to do that. If there's no action to come  
12 back to the next cycle, and perhaps people can be more informed  
13 or others who are not here. NO? Why not? Why is that something  
14 that's - I mean, not bad idea or good idea, but is it not  
15 possible?

16

17 HOWARD BERLINER: But the thing, I mean,

18

19 JO BOUFFORD: Dr. Berliner.

20

21 HOWARD BERLINER: I'm not sure why it would come back at  
22 all. I'm not quite - why don't we come back at the next cycle.

23

24 JO BOUFFORD: Because it's not been decided.

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CHARLIE ABEL: This is an establishment -

HOWARD BERLINER: We decided not to approve it.

JO BOUFFORD: No, you didn't approve it, but it would be, it's now sitting there are no recommendation bucket. So then presumably it would need to come back again to get an action, unless we decide to act on to disapprove it which would be a motion in there with some discussion as to whether that was advisable or not as a strategy, as opposed to having it come back the next time.

HOWARD BERLINER: But why would it come back?

JO BOUFFORD: Because there's been no action, my understanding is there has to be some action one way or another, right?

HOWARD BERLINER: But no action is ultimately no action?

JIM DERING: There needs to be 13 votes up or 13 votes down in order for there to be a determination.

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1           JO BOUFFORD:    He's asking why would it come back at all?  
2    Would it just hang there forever if we haven't acted?

3

4           JIM DERING:     Correct, so -

5

6           JO BOUFFORD:    I understand, but my understanding of advice  
7    was that if we don't act today it could come back for a cycle,  
8    to the next cycle for discussion and consideration and we have  
9    six members who may be there and there might be an opportunity  
10   for a vote one way or another.  So that's the reason for that.

11

12          JIM DERING:     Just to get into the limbo issue a little  
13   more, so, in order for there to be a right to challenge a  
14   determination there needs to be an affirmative vote up or down  
15   of 13 members, majority of the council, and so recently there  
16   have been two circumstances where the council wasn't able to get  
17   an affirmative vote of 13 up or down, and in order to avoid  
18   having the application stay in limbo, so in order to avoid a  
19   scenario where the applicant can't exercise their legal rights  
20   and the application is in essence floating out there, the  
21   council had decided to deny those applications to let them go to  
22   a hearing.  So, to talk about that a little bit more, so in  
23   essence what we have in those circumstances is it going to an  
24   administrative law judge and then the administrative law judge

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1 in some regards making the determination. In order for there to  
2 be administrative hearing, that involves the preparation of  
3 witnesses, that involves a hearing that in essence is like a  
4 trial, but before an administrative law judge. That takes a lot  
5 of resources on the part of the Department and on the part of  
6 the applicants. So, to use that as a mechanism when there isn't  
7 an affirmative vote is, can present issues from the Department's  
8 standpoint. If there was a circumstance where after many, many  
9 good efforts or after good efforts, it just can't get there then  
10 OK, maybe that's considered. Here where we have a situation  
11 where six members aren't here and we only have 13 members here,  
12 to vote to send that to a hearing, it just seems problematic  
13 from my standpoint.

14

15 JO BOUFFORD: Ok, Dr. Berliner, then Dr. Gutierrez, then  
16 Dr. Martin.

17

18 HOWARD BERLINER: It's not as if anyone wants there to be  
19 an administrative law hearing. It's something that in the past  
20 when we've done it it's been in theory to benefit the applicant  
21 so that they can pose a challenge. But the idea that an  
22 application would just keep coming back until it got a  
23 sufficient number of votes to pass seems a little bit -

24

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1           JO BOUFFORD:    That wasn't exactly my purpose.  I mean, my  
2 purpose was just to say that we have six people missing and it's  
3 not like it's a 5-4 or 6-5 with a highly contentious discussion.  
4 That wasn't the purpose.  I was just suggesting we might recycle  
5 rather than disapproving and starting a process.

6

7           HOWARD BERLINER:    I understand, and it just seems, I  
8 mean, so if there were only three people missing, would that,  
9 and it still failed, would that - what's the number that -

10

11          JO BOUFFORD:    OK, let's hear, can we - you want, counsel,  
12 want to say something?  I was going to hear from other people  
13 and come back again.

14

15          JIM DERING:    If you don't mind if I could, so I think  
16 historically and Coleen and Lisa could probably speak to this  
17 better than I can, but I think the idea of having an application  
18 come back to revote is not something that's new.  I think it's  
19 something that's very typical.  I think what's atypical is  
20 voting to send it to a hearing.

21

22          JO BOUFFORD:    Doctor, could we just go in order, if you  
23 don't mind.  Dr. Gutierrez.

24



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1           ANGEL GUTIERREZ:     Dr. Berliner already eloquently  
2 expressed what I wanted to say, however semantically the  
3 creators of limbo, back in the medieval times have recently  
4 decided a limbo no longer exists. So we need to come up with  
5 some other semantic way of saying what we are trying to say.

6

7           JO BOUFFORD:     Dr. Martin then Dr.

8

9           GLENN MARTIN:    I have no particular expertise in limbo. My  
10 tribe got through millennia without it. But I'm just concerned  
11 procedurally, what are we doing? Because I would be happy to  
12 postpone it but it already seems to me it has been addressed and  
13 is off the agenda. So It's unclear to me what's actually  
14 happening.

15

16          JO BOUFFORD:     Why has it been - that part -

17

18          GLENN MARTIN:    Well, we voted on it, we took action. I  
19 mean, it may have failed, but -

20

21          JO BOUFFORD:     The action is no recommendation. Right?

22

23          CHRIS DELKER:    You didn't take action because there was no  
24 decision reached.

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2           JO BOUFFORD:    the decision was that we didn't have enough  
3 votes to pass it.

4

5           JOHN RUGGE:     Just point of information,

6

7           JO BOUFFORD:    Let me see if he's finished with the  
8 comment.

9

10          GLENN MARTIN:  I'm not an expert in parliamentary procedure  
11 or anything else, it just seems to me that it failed.  I don't  
12 know who would put it on the agenda for next month.  Sounds like  
13 the State was going to do that, but that's not necessarily what  
14 happens automatically.  So, I'm not sure -

15

16          JO BOUFFORD:    Mr. Dering, do you want to clarify that  
17 question?  It's a procedural question.

18

19          JIM DERING:     In order for there to be an action, there  
20 have to be 13 votes.  So, up or down.  So if there aren't 13  
21 votes, there's no action.

22

23          GLENN MARTIN:  Alright.  But I guess -

24

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1           JO BOUFFORD:    He's asking where does the decision come to  
2 bring it back if that is an option?  Would we need to affirm  
3 that or would that be something the Department do?  That's  
4 really what you're asking?  Let me ask Dr. Rugge to make his  
5 comment and then Charlie.

6

7           JOHN RUGGE:     Just a point of information, who sets the  
8 agenda?  Is it the commissioner or is it the chair of the  
9 council?  I think that's probably not our job.  Whoever sets the  
10 agenda needs to decide whether to bring it back or not.  Who  
11 does set the agenda?

12

13          CHARLIE ABEL:   The commissioner does set the agenda.  And  
14 to answer Dr. Martin's question we, it is not automatic that a  
15 project that receives no recommendation come back the next  
16 cycle.  And this has happened numerous other times when there's  
17 been no recommendation.  And the project remains a pending  
18 project for us if it's an establishment project, because the  
19 commissioner cannot be the decider on establishment projects.  
20 This body is.  If it does not make a decision as to approval or  
21 disapproval, then it remains a pending project for us.  If there  
22 are again, if there are specifics that this body would like the  
23 applicant to provide in terms of information or document,  
24 whatever, we can, the Department staff can work with the

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1 applicant to provide that and while the Department is bound by  
2 the three statutory criteria as we've described in the  
3 regulations to implement the statute, someone mentioned earlier  
4 that this body does have the fourth criteria which is all other  
5 such matters it deems necessary. So, the, if there is something  
6 that you feel is needed to complete this application,  
7 information submitted that you would need to render a decision,  
8 we can work with the applicant on those requests.

9

10 JO BOUFFORD: Dr. Martin and then Dr. Kalkut. Dr. Brown,  
11 sorry, then Dr. Kalkut.

12

13 LAWRENCE BROWN: I appreciate the information that  
14 colleagues and Department has provided and counsel provided.  
15 I'm sure I think we should move the agenda. I'm not sure we're  
16 going to get any more information that's going to be - unless  
17 someone's going to make a motion to disapprove, I think we need  
18 to move the agenda.

19

20 GARY KALKUT: My question was also a procedural one  
21 related to disapproval. If there was a motion to disapprove and  
22 that did not pass with all the requisits, what's a yes and  
23 what's a no? does that change the, how this is handled in terms

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1 of putting back on the agenda or not? Because right now we just  
2 have a no decision on an approval motion.

3

4 JIM DERING: Sure, if there was a no decision on a  
5 disapproval we would be in the same spot that we're in now. So  
6 it wouldn't change.

7

8 JO BOUFFORD: So-

9

10 LAWRENCE BROWN: My motion on the table is to move the  
11 agenda.

12

13 JOHN RUGGE: is a motion to disapprove it passes then it  
14 can't come back.

15

16 JO BOUFFORD: would somebody like to move -

17

18 JIM DERING: Correct.

19

20 JO BOUFFORD: Is there, except through this hearing  
21 process that he described earlier would precipitate the  
22 opportunity for a hearing if they wish to pursue it.

23

24 JIM DERING: And just to comment on the -

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2           JO BOUFFORD:    We proceeded, his motion was to keep going  
3 and leave it where it is.  I'm sorry?

4

5           JIM DERING:     If I could make one comment.  And I would  
6 hope that - I think the in my opinion, the goal of PHHPC should  
7 be to reach a determination on matters at least 13 up or 13  
8 down.  I would hope that I this circumstance based on my  
9 comments I would hope that people wouldn't disapprove merely to  
10 send it, to create the hearing right.

11

12           JO BOUFFORD:   So I guess, so your motion is to leave the  
13 decision as it was and move on.

14           Second.

15           Alright.  Any discussion of that motion?  OK.  All in  
16 favor?

17           [Aye]

18           Opposed?  Any abstentions.  OK.  Stays 11-3.  No  
19 recommendation.  And I guess the commissioner can decide the  
20 disposition.  The establishment committee can - I thought you  
21 said earlier the commissioner sets the agenda.  No, I  
22 understand.  That's what I meant.  He can decide whether to put  
23 it on the agenda again.  Thank you very much.

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1           OK. Mr. Robinson, would you like to move ahead on the,  
2 hear a report on the ad-hoc committee on freestanding ambulatory  
3 surgery centers and charity care.

4

5           PETER ROBINSON:           It would be my honor. I assume then  
6 the report of the committee on establishment is concluded.

7

8           JO BOUFFORD:    It is concluded.

9

10          PETER ROBINSON:        Excellent. Ok. Well, I do want to  
11 thank first of all the members of the ad-hoc committee on  
12 ambulatory surgery and charity care, and especially Mr. Delker  
13 from the Department who has done yeoman's work in bringing us  
14 this far. You have a copy of the draft report in the material  
15 that you got in advance. So I just want to highlight a couple  
16 of things in it and then get your feedback. We are not going to  
17 ask for action on the report at this meeting. We will be having  
18 another cycle on committee day so that we can get input from  
19 other members of the industry that are interested in providing  
20 that input and trying to incorporate that into anything that we  
21 finalize. So I just ask committee members to give us your  
22 thoughts now so that we can incorporate that thinking as well.  
23 So, just to recall, the committee was organized in order to take  
24 a look at why freestanding ambulatory surgery centers were

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1 falling short in reaching their projected number of cases for  
2 the underserved, and I think we were especially focused on the  
3 inability of many if not almost all of these centers to meet  
4 their charity care goals, and this became apparent as we began  
5 to look at those centers that were coming up on the end of their  
6 five year limited life, and then needed to be considered for  
7 either perpetual life if that's possible in this world, but at  
8 least a more permanent status. So, we had a series of four  
9 meetings beginning in September of last year, so this has been  
10 ongoing for a while. And we did hear from ambulatory surgery  
11 center operators, some consumer groups came in, the FQHCs were  
12 also involved in providing us with input, and some very  
13 important suggestions from the New York State association of  
14 ambulatory surgery centers as well as other stakeholders. And  
15 here we were looking at trying to get to the practical aspects  
16 of making sure that these centers were reaching and serving  
17 uninsured and Medicaid clients and we heard especially about how  
18 the services and the characteristics of these, of individual  
19 ambulatory surgery centers which were driven in part by  
20 circumstances of geography and healthcare markets in which each  
21 operate. That that creates some real complications. So, as an  
22 example, centers that focus exclusively on ophthalmology are  
23 almost going to see entirely a Medicare related population and  
24 so we began to struggle with this one size fits all kind of



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1 approach to handling these charity care obligations and I think  
2 that certainly came out in the conversation. The other thing  
3 that we're paying attention to is the changing landscape. So in  
4 addition to those circumstantial factors, we had a report  
5 earlier about DSRIP and the impact that DSRIP is going to have,  
6 the expansion of coverage so that the number of people in New  
7 York State that are uninsured is being dramatically reduced with  
8 significant numbers going into Medicaid programs and others  
9 getting coverage through the exchanges. The structure of PPSs  
10 themselves as part of DSRIP is going to matter in terms of  
11 managing access and how patients are going to be organized to  
12 access care through these PPSs. So that's going to also be  
13 important.

14       So where we are at the moment, and this is what the report  
15 reflects, we concluded that there is no specific minimum or  
16 optimum proportion of Medicaid and charity care cases that can  
17 be prescribed uniformly for ambulatory surgery centers. And so  
18 we're going to recommend at least at this point and I think this  
19 is where we remain open for input that the assessment of  
20 Medicaid and charity care efforts for each ambulatory surgery  
21 center be undertaken with regard to the individual  
22 characteristics of each applicant and the circumstances  
23 including the types of surgical procedures that are being  
24 proposed, how those services align with the rest of the

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1 organization of healthcare services in the market that they  
2 operate in, and also just geographically where the uninsured and  
3 the Medicaid populations live in relation to these ambulatory  
4 surgery centers.

5       We think that these kinds of assessments could be done  
6 prospectively when applications come in so that we can establish  
7 some realistic goals that are relevant to each center and then  
8 use the five-year limited life period as a way of assessing them  
9 against almost a tailored set of standards and requirements. And  
10 what you can do is see in the paper that we submitted some of  
11 the review criteria we're looking at. So, I think this is kind  
12 of where we are at the moment. I would say that we had a set of  
13 key points that came up at the last meeting. One was the need  
14 for better monitoring of ambulatory surgery centers in advance  
15 of the five year limited life renewal, so getting feedback here  
16 to the council in advance of the end of the life, so we only  
17 have one shot at looking at this, but rather can review and  
18 provide further input to the Department on these applications  
19 that looks particularly at their Medicaid participation in  
20 charity care rates.

21       The other thing is that this interface between charity care  
22 and bad debt is likely to become a more prominent issue, we  
23 think. When you look at how people access coverage through the  
24 exchange especially with these medal levels now where patient

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1 responsibilities can range from 10 percent to up to 40 percent  
2 of the cost of healthcare, for many people who take those lower  
3 levels of coverage, their the ones that probably have the most  
4 limited ability to provide payment and so we fully anticipate  
5 that bad debt is going to be a bigger factor for ambulatory  
6 surgery centers and other providers as well in the future. So,  
7 we need to think about how we interface with that, but actually  
8 also look to the ambulatory surgery centers as part of the  
9 individual tailored plan that we might put into place to not  
10 necessarily expect but maybe to define proactively charity care  
11 for some part of that patient contribution for those patients  
12 that might be eligible for it. So, just a factor that we're  
13 kind of going to be looking at.

14 I know that just since this draft report was issued, Mr.  
15 Delker got some sort of additional information on the  
16 contribution that existing ambulatory surgery centers are making  
17 to the bad debt and charity care pools in the State, and I  
18 wonder, Chris, if you wouldn't mind commenting on that.

19

20 CHRIS DELKER: We had earlier put together information  
21 that was not complete in the sense that it represented only the  
22 amount that the ASCs were unable to collect from the payers and  
23 had to pay directly into the pool and that was about \$3 to \$4  
24 million a year. The HICRA surcharge ambulatory surgery services

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1 delivered by freestanding providers, not hospital providers is  
2 9.6 percent for commercial and indemnity plans and commercial  
3 managed care plans and it's about 7 percent on Medicaid, the  
4 non-State, State share of Medicaid and other government payers  
5 like workers compensation. The total of that contribution, that  
6 surcharge on ambulatory surgery centers over the six year period  
7 of 2009 to 14 inclusive was \$1.7 billion. So, the freestanding  
8 ambulatory surgery activities represent a subsidy if you will to  
9 the hospital safetynets and other eligible safety net providers  
10 of that averages about \$285 million a year, although the average  
11 has been higher in recent years as the number of am-surge  
12 centers has increased. So I think that provides more of a  
13 context for consideration of charity care and support of the  
14 underserved. There's already a transfer if you will of funds  
15 from ambulatory surgery centers into the safety net that's  
16 occurring by statute. In addition to the considerations this  
17 committee might want to add to providers for direct charity care  
18 and active enrolment of Medicaid clients.

19

20 PETER ROBINSON: Well, thank you for that comment,  
21 Chris. I'm going to just open it up, Dr. Ruge.

22

23 JOHN RUGGE: As you suggested, bad debt is not the  
24 equivalent of charity care. It is not fair to look at

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1 increasing bad debt as a substitute for charity care because  
2 that does place a burden on patients and also a deterrent to  
3 care. One idea that only occurred to me now is that all FQHCs as  
4 you probably know are required to have a sliding fee schedule,  
5 and I know very well of one FQHC that is solicited acceptance of  
6 the sliding fee scale by specialty providers and have received  
7 that. In this case, I wonder if that might serve as a proxy for  
8 meeting the charity care requirement, that if a surgical center  
9 went to the FQHCs in this community, accepted patients on  
10 referral using the sliding fee, that there be no more arithmetic  
11 necessary to demonstrate commitment to the underserved.

12

13       PETER ROBINSON:       As we begin to think about that very  
14 issue, I think the idea of a sliding scale does make a lot of  
15 sense, and I think we are going to at least give consideration  
16 to including that as part of our recommendation. So thank you  
17 for that comment. I think it's right on target. And it is not  
18 easy to develop a sliding fee and it's not easy to receive from  
19 patients family income of the rest, so by already plugging into  
20 an existing system which FQHCs are mandated to have, may  
21 mobilize this in a way that's simply saying go ahead and develop  
22 a sliding fee and then let us decide if that sliding fee is  
23 really fair or not. I'm just saying maybe good to use a

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1 prebuilt mechanism rather than require the development of a  
2 whole new system.

3

4 PETER ROBINSON: Thank you for that. I think - thank  
5 you for those suggestions. Other comments? Observations?

6

7 JO BOUFFORD: I had another question when you were  
8 proposing this issue of better monitoring before renewal. Would  
9 a renewal for this perpetual license you talk about, would that  
10 be normally coming to the council or would that be  
11 administrative? Because I wasn't aware that it came back to us.

12

13 CHRIS ROBINSON: Well, the ones that were approved  
14 within the last, what is it, five years, last - those approved I  
15 the last three years don't have to come back. That's  
16 administrative. But those beforehand, you recall there was a  
17 policy change for that a couple years ago. Those beforehand  
18 still have to come back and you're seeing some of those now that  
19 are coming back for permanent establishment, if you will. But as  
20 to the monitoring a suggestion was made at the last meeting was  
21 that the Department perhaps every six months give the council a  
22 list of those five years that you still have authority over and  
23 how they're doing at what interval, and so that would enable use  
24 to certainly advise them, you need to increase your Medicaid or

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1 charity care uncompensated care, whatever, well in advance of  
2 the five years, and it would also give this council as Peter  
3 said at the beginning, some sort of a heads up about which ones  
4 might be coming down instead of just having to make the decision  
5 on the information given to you at one meeting.

6

7 PETER ROBINSON: right, and I think even for those that  
8 the council does not have any direct responsibility for now  
9 getting those interim reports even depending on, regardless of  
10 the, whether they're before and after the change in the CON  
11 thresholds, that I think that would help inform the council in  
12 terms of how effective the guidelines were that we've been  
13 establishing and whether we're having problems with them still  
14 or not.

15

16 JO BOUFFORD: So that would be part of your final  
17 recommendation - define both of those elements that you  
18 described.

19

20 PETER ROBINSON: We're looking at incorporating those  
21 things in the final draft. Right.

22

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1           JO BOUFFORD:    Dr. Martin, you had a comment? Dr. Martin.  
2 Dr. Brown. I don't know why I keep calling you Dr. Martin. Dr.  
3 Brown.

4  
5           LAWRENCE BROWN:       Well, we're both on two similar  
6 advisory councils, I guess that's the reason.

7  
8           JO BOUFFORD:    I doubt it very seriously.

9  
10          LAWRENCE BROWN:       I guess, I need some clarification.  
11 That there has been limited life approvals. If they occurred  
12 before three years ago, there was a difference about whether or  
13 not they come back before the council? I'm not sure I understood  
14 that.

15  
16          CHARLIE ABEL:    Sure. I can explain. As part of this  
17 council's CON streamlining work that came out of Dr. Rugge's  
18 planning committee, the recommendation was that for limited life  
19 approvals on going forward basis. The operating certificate  
20 would be limited, not the establishment approval which had been  
21 the case. And that if, so those limited life approvals when they  
22 were due for review the department would do the review  
23 administratively. We could choose to as we have in some cases  
24 extent a limited life for some defined duration. If they did



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1 not, if the applicant did not meet all of their commitments or  
2 approve if they had, and clearly if the applicant or the  
3 provider at that point in the limited life applying for  
4 perpetual life, if they clearly were not living up to their  
5 promises, then the Department would be in a position to  
6 recommend that the application not be approved. In those cases,  
7 those applications would come to this council, but if the  
8 Department were to approve one of these post-CON reform limited  
9 operating certificate approvals then this body would not see  
10 those approvals.

11

12       LAWRENCE BROWN: I guess the reason I raise that is I know  
13 that during my short stay on this council we've asked the  
14 Department for a lot of data to inform our decision making, and  
15 I guess I'm a bit concerned going forward that this process  
16 allows us - I'm trying to be really, I understand that the  
17 Department is doing the best that it could be, but I've come to  
18 appreciate there are some times during these council meetings  
19 that we've come to a point that we don't believe we have enough  
20 information to make a decision. Now we're asking you to with  
21 this proposal to me, provide more data and some of it in an  
22 administrative and not coming back. So, please forgive me, I'm a  
23 little uncomfortable with that. Just a statement of my comfort  
24 level. Thank you for allowing me that.

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JO BOUFFORD: Alright, any other statements of comfort or discomfort. Oh, I think it's Peter's group is putting their final report together working with staff it's important to have those concerns articulated.

PETER ROBINSON: So we welcome all of you to participate in the committee day and sit in on the ad-hoc committee meeting which is going to be part of the committee day and continue to provide input to this process, so thank you.

JO BOUFFORD: Thank you very much. Yes, Dr. Rugge.

JOHN RUGGE: Peter, do you expect this to be the final committee meeting and then we'll be ready to go?

PETER ROBINSON: I do.

JO BOUFFORD: Any other comments, questions? Alright. Fine. I think that concludes our business unless there's any other business for the public session? Hearing none, I will ask for a motion to - I guess I can declare us adjourned, can I not? Thank you, I declare this meeting adjourned, and we will go into executive session for report of the committee on health

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1 personnel interprofessional relations. Dr. Grant will be  
2 chairing that. So let me ask all those who are not members of  
3 the Council to please leave the room.

## MEMORANDUM

**TO:** Members of the Health Planning Committee

**FROM:** Charles Abel, Acting Director  
Center for Health Facility Planning, Licensure and Finance

**DATE:** August 6, 2015

**SUBJECT:** **Application for Designation as Hospital Stroke Centers –  
Jones Memorial Hospital**

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Enclosed is the staff recommendation requesting approval for stroke center designation for Jones Memorial Hospital.

Jones Memorial Hospital is the only hospital Alleghany County. Staff in the central office and the Western Regional office have reviewed the application and found it acceptable with certain contingencies.

The department's process is to have the PHHPC approve the staff recommendation and then staff will conduct an on-site visit. We are seeking the council's endorsement of this recommendation with contingencies.

With the approval of Jones Memorial Hospital, Alleghany County will have a designated Stroke Center and will be the 120<sup>th</sup> designated stroke center in the state.

Once designated, the regional emergency medical services council will be notified and local EMS can begin directing patients to Jones Memorial. EMS protocol provides for bypass of hospitals which are not so designated.

# APPLICATION FOR DESIGNATED STROKE CENTER

## *Staff Report*

Hospital: Eva Benedict  
Chief Executive Officer  
Jones Memorial Hospital  
191 North Main Street  
Wellsville, NY 14895

Findings:

- Meets the criteria for designation of stroke center
- The stroke center has been established and is operational with written policy and procedures
- There is a dedicated acute stroke team and it is staffed by qualified healthcare professionals with contingency
- The medical director meets the criteria for training as delineated by the Department with contingency
- The stroke center has a designated stroke unit
- Neuro-imaging services available 24/7 to perform and read CT/MRI scans consistent with time targets acceptable to Department
- Policies and Procedures exist for laboratory services 24/7 with laboratory results for acute stroke patients being a priority
- Evidence of ongoing patient and community education services has been submitted with contingency
- Quality improvement committee has been established

Approval Contingency Upon:

- Submission of evidence that Stroke Director meets two of the four criteria
- Submission of evidence that even physicians who are board certified must meet continuing educational requirements
- Submission of evidence that primary care physicians who treat stroke patients in the ICU meet the educational requirements
- Submission of evidence of educational requirements for OT/PT/Speech
- Submission of revised transfer agreement which indicate that services are available within 2 hours of being deemed clinically necessary

- Submission of community education efforts being met twice a year
- Submission of quality data for benchmarking including additional measures of NIHSS and discharge destination

Recommendations:

- Approval

## **SUMMARY OF EXPRESS TERMS**

The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying

- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center



Pursuant to the authority vested in the Public Health and Health Planning Council by Section 225 of the Public Health Law, subject to the approval by the Commissioner of Health, Subpart 7-2 of the State Sanitary Code, as contained in Chapter 1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective upon filing with the Secretary of State.

**SUBPART 7-2**

**Children's Camps**

**(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a;**

**L. 2012, ch. 501)**

Subdivision (o) of section 7-2.5 is amended to read as follows:

(o) The camp operator shall provide adequate supervision. *Adequate supervision* shall mean:

- (1) supervision such that a camper is protected from any unreasonable risk to his or her health or safety, including physical or sexual abuse or any public health hazard; [and]
- (2) as a minimum, there shall exist visual or verbal communications capabilities between camper and counselor during activities and a method of accounting for the camper's whereabouts at all times[.]; and

(3) at camps required to comply with section 7-2.25 of this Subpart, protection from any unreasonable risk of experiencing an occurrence which would constitute a reportable incident as defined in section 7-2.25(h)(4) of this Subpart.

Section 7-2.24 is amended to read as follows:

Variance; waiver.

(a) *Variance* - in order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the permit-issuing official for a variance from a specific provision(s) when the health and safety of the children attending the camp and the public will not be prejudiced by the variance, and where there are practical difficulties or unnecessary hardships in immediate compliance with the provision. An operator must meet all terms of an approved variance(s) including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the permit-issuing official specifies. The permit-issuing official shall consult with the State Department of Health and shall obtain approval from the State Department of Health for the proposed decision, prior to granting or denying a variance request for requirements in section 7-2.25 of this Subpart.

(b) *Waiver* - in order to accept alternative arrangements that do not meet certain provisions of this Subpart but do protect the safety and health of the campers and the public, an operator may submit a written request to the permit-issuing official for a

waiver from a specific provision of this Subpart. Such request shall indicate justification that circumstances exist that are beyond the control of the operator, compliance with the provision would present unnecessary hardship and that the public and camper health and safety will not be endangered by granting such a waiver. The permit-issuing official shall consult with a representative of the State Department of Health prior to granting or denying a waiver request. An operator must meet all terms of an approved waiver(s), including the condition that it will remain in effect indefinitely unless revoked by the permit-issuing official or the facility changes operators. The permit-issuing official shall consult with the State Department of Health, and shall obtain the approval of the State Department of Health for the proposed decision, prior to granting or denying a waiver request related to the requirements in section 7-2.25 of this Subpart.

New subdivisions (h)-(m) of section 7-2.25 are added to read as follows:

(h) Definitions. The following definitions apply to Section 7-2.25 of this Subpart.

- (1) *Camp Staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the children's camp.
- (2) *Department* shall mean the New York State Department of Health.

(3) *Justice Center* shall mean the Justice Center for the Protection of People with Special Needs, as established pursuant to Section 551 of the Executive Law.

(4) *Reportable Incident* shall include those actions incorporated within the definitions of “physical abuse,” “sexual abuse,” “psychological abuse,” “deliberate inappropriate use of restraints,” “use of aversive conditioning,” “obstruction of reports of reportable incidents,” “unlawful use or administration of a controlled substance,” “neglect,” and “significant incident” all as defined in Section 488 of the Social Services Law.

(i) Reporting.

(1) In addition to the reporting requirements of section 7-2.8(d), a camp operator subject to section 7-2.25 of this Subpart and all camp staff falling within the definition of “mandated reporter” under section 488 of the Social Services Law shall immediately report any reportable incident as defined in section 7-2.25(h)(4) of this Subpart and Section 488 of the Social Services Law, where such incident involves a camper with a developmental disability, to the permit-issuing official and to the Justice Center’s Vulnerable Persons’ Central Register. Such report shall be provided in a form and manner as required by the Justice Center.

(j) Employee Screening, Training, and Code of Conduct

(1) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's staff exclusion list, the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(1) of this Subpart.

(2) A camp operator must ensure that camp staff, and others falling within the definition of mandated reporter under Section 488 of the Social Services Law who will or may have direct contact with campers having a developmental disability, receive training regarding mandated reporting and their obligations as mandated reporters. A camp operator shall ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(3) The camp operator shall ensure that all camp staff and others falling within the definition of "custodian" under Section 488 of the Social Services Law are

provided with a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct.

(k) Disclosure of information

(1) Except to the extent otherwise prohibited by law, the camp operator shall be obliged to share information relevant to the investigation of any incident subject to the reporting requirements of this Subpart with the permit-issuing official, the State Department of Health, and the Justice Center. The permit-issuing official, the department and the Justice Center shall, when required by law, or when so directed by the department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of section 7-2.25 (i) of this Subpart.

(2) Except as otherwise prohibited by law, the operator of a camp not otherwise subject to Article Six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.

(l) Incident Management.

(1) The camp operator shall cooperate fully with the investigation of reportable incidents involving campers with developmental disabilities and shall provide all necessary information and access to conduct the investigation. The camp operator shall promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability. The camp operator shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center and permit-issuing official upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.

(2) Unless delegated by the Justice Center to a delegate investigatory agency as defined in subdivision seven of Section 488 of the Social Services Law, incidents of abuse or neglect, as defined in subdivision eleven of Section 488 of the Social Services Law, shall be investigated by the Justice Center. With regard to all other reportable incidents, as defined in Section 488 of the Social Services Law, the permit-issuing official shall initiate a prompt investigation of an allegation of a reportable incident, which shall commence no later than five business days after notification of such an incident, unless the Justice Center agrees that it will undertake such investigation. Additional time for completion of the investigation

may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. At a minimum, the investigation of any reportable incident shall comply with the following:

- (i) Investigations shall include a review of medical records and reports, witness interviews and statements, expert assessments, and the collection of physical evidence, observations and information from care providers and any other information that is relevant to the incident. Interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of other parties or witnesses or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed. The procedures required by this Subparagraph (i) may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.
- (ii) All evidence must be adequately protected and preserved.



(iii) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible under law or regulation, including but not limited to Article 11 of the Social Services Law.

(iv) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation and details of steps taken to investigate the incident. The results of the investigation shall be promptly reported to the department, if the investigation was not performed by the department, and to the Justice Center.

(v) If any remedial action is necessary, the permit-issuing official shall establish a plan in writing with the camp operator. The plan shall indicate the camp operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the department and to the Justice Center.

(vi) The investigation and written report shall be completed and provided to the department and the Justice Center within 45 days of when the incident was first reported to the Justice Center. For purposes of this

section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, and to complete the findings referenced in paragraph (1)(2)(iv) of this subdivision.

- (3) (i) The camp shall maintain a facility incident review committee, composed of members of the governing body of the children’s camp and other persons identified by the camp operator, including some members of the following: camp administrative staff, direct support staff, licensed health care practitioners, service recipients, the permit-issuing official or designee and representatives of family, consumer and other advocacy organizations, but not the camp director. The camp operator shall convene a facility incident review panel to review the timeliness, thoroughness and appropriateness of the camp's responses to reportable incidents; recommend additional opportunities for improvement to the camp operator, if appropriate; review incident trends and patterns concerning reportable incidents; and make recommendations to the camp operator to assist in reducing reportable incidents. The facility incident review panel shall meet at least annually, and also within two weeks of the completion of a written report and remedial plan for a reportable incident.
- (ii) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and regulations of the Justice Center, a camp operator may seek an

exemption from the requirement to establish and maintain an incident review committee. In order to obtain an exemption, the camp operator must file an application with the permit-issuing official, at least sixty days prior to the start of the camp operating season, or at any time in the case of exemptions sought within the first three months following the effective date of this provision. The application must provide sufficient documentation and information to demonstrate that that compliance would present undue hardship and that granting an exemption would not create an undue risk of harm to campers' health and safety. The permit-issuing official shall consult with the State Department of Health (department), and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator must meet all terms of an approved exemption(s), including the condition that it will remain in effect for one year unless revoked by the permit-issuing official, subject to department approval, or the facility changes operators. Any application for renewal shall be made within 60 days prior to the start of the camp's operating season. The procedure set forth in this Subparagraph (ii) shall be used instead of the general procedures set forth in section 7-2.24 of this Subpart.

(m) In addition to the requirements specified by subdivisions (d) and (g) of section 7-2.4 of this Subpart, a permit may be denied, revoked, or suspended if the children's camp fails to comply with regulations, policies, or other requirements of the Justice Center. In

considering whether to issue a permit to a children's camp, the permit-issuing official shall consider the children's camp's past and current compliance with the regulations, policies, or other requirements of the Justice Center.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

### **Legislative Objectives:**

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

### **Needs and Benefits:**

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on

that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.

- required that children’s camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children’s camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

**Compliance Costs:**

**Cost to Regulated Parties:**

The amendments impose additional requirements on children’s camp operators for reporting and cooperating with Department of Health investigations at children’s camps for children with developmental disabilities (hereafter “camps”). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children’s camps for children with developmental disabilities operate each year, with combined reports of zero to two

incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of “custodian” under section 488 of the Social Services Law (collectively “employees”) are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs



associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment,

should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

**Cost to State and Local Government:**

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

**Cost to the Department of Health:**

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be

distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

**Local Government Mandates:**

Children’s camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the “Cost to Regulated Parties” section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the “Cost to State and Local Government” section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

**Paperwork:**

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

**Duplication:**

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

**Alternatives Considered:**

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

**Federal Standards:**

Currently, no federal law governs the operation of children's camps.

**Compliance Schedule:**

The proposed amendments are to be effective upon filing with the Secretary of State.

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**Regulatory Flexibility Analysis**  
**for Small Business and Local Government**

**Types and Estimated Number of Small Businesses and Local Governments:**

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

**Compliance Requirements:**

**Reporting and Recordkeeping:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

**Other Affirmative Acts:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” “Local Government Mandates,” and “Paperwork” sections of the Regulatory Impact Statement.

**Professional Services:**

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

**Compliance Costs:****Cost to Regulated Parties:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

**Cost to State and Local Government:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the



“Cost to Regulated Parties” section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in “Cost to State and Local Government” and “Local Government Mandates” portions of the Regulatory Impact Statement.

**Economic and Technological Feasibility:**

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

**Minimizing Adverse Economic Impact:**

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department’s ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

**Small Business Participation and Local Government Participation:**

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

## **Rural Area Flexibility Analysis**

### **Types and Estimated Number of Rural Areas:**

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

### **Reporting and Recordkeeping and Other Compliance Requirements:**

#### **Reporting and Recordkeeping:**

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

#### **Other Compliance Requirements:**

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

**Professional Services:**

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

**Compliance Costs:****Cost to Regulated Parties:**

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

**Economic and Technological Feasibility:**

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that involve capital improvements.

**Minimizing Adverse Economic Impact on Rural Area:**

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

**Rural Area Participation:**

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

## **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 have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

## **Emergency Justification**

Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs (“Justice Center”), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a “state oversight agency.” These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur

pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers



with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, section 9.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon filing with the Department of State.

Subdivision (b) of section 9.1 is amended as follows:

(b) Synthetic Cannabinoid means any manufactured chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

(1) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH 007, JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 98, JWH 122, JWH 164, JWH 200, JWH 210, JWH 398, AM 2201, MAM 2201, EAM 2201 and WIN 55 212.)

(2) Naphthylmethyloindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH-175, and JWH-184.)

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH 307.)

(4) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH-176.)

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any

extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: RCS-8 (SR-18), JWH 201, JWH 250, JWH 203, JWH-251, and JWH-302.)

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: CP 47,497 (and homologues (analogs)), cannabicyclohexanol, and CP 55,940.)

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, AM-2233 and AM-679.)

(8) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2.)

(9) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: HU-210.)

(10) (6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo{c}chromen-1-ol (Dezanabinol or HU-211)

(11) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248.)

(12) Adamantoylindazoles including but not limited to Adamantyl Carboxamide Indazoles. Any compound containing a 3-(1-adamantoyl)indazole structure with substitution at the nitrogen atom of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AKB-48, MAB-CHMINACA, 5F-AKB-48.)

(13) Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl) indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following: UR-11, XLR-11, A-796,260.

(14) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

### **Legislative Objectives:**

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Accordingly, PHHPC has issued 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. This amendment would add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

### **Needs and Benefits:**

“Synthetic cannabinoids” encompass a wide variety of chemicals that are designed to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities;

seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients have presented with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a “not for human consumption” label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. In 2012, before 10 NYCRR Part 9 was promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19, which was consistent with the results of a 2011 “Monitoring the Future” national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at the time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.



Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

**Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

**Paperwork:**

The regulation imposes no new reporting or filing requirements.

**Duplication:**

The federal Synthetic Drug Abuse Prevention Act of 2012 banned the sale and distribution of products containing the synthetic cannabinoids identified in this regulation, by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

**Alternatives:**

The Department considered relying on the existing regulation to address these recently identified synthetic cannabinoids. However, the Department determined that amending the regulation to explicitly identify these substances would enhance state and local enforcement authority and more effectively address this public health threat.

**Federal Standards:**

As noted above, the Synthetic Drug Abuse Prevention Act of 2012 places synthetic cannabinoids on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

**Compliance Schedule:**

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

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## **Regulatory Flexibility Analysis for Small Business and Local Governments**

### **Effect of Rule:**

The amendment will affect only the small businesses that are engaged in selling products containing synthetic cannabinoids. The Department does not have information concerning the number of small businesses that currently sell these products. However, in 2011 and 2012, Commissioner's Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids, resulting in approximately 8,000 establishments being served with one or both Orders by public health authorities. Banned product was found in 286 of these locations. Subsequent to these efforts, the number of related complaints dropped significantly.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of additional synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including Part 9, utilizing any civil and criminal remedies that may available. PHL §§ 228, 229, 309(1)(f) and 324(e). Local governments are also empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code.

### **Compliance Requirements:**

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of the additional synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to \$2,000 per violation, pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to \$250 and 15 days in prison, and for each subsequent offense

up to \$500 and 15 days in prison.

**Professional Services:**

Small businesses will need no additional professional services to comply. Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Economic and Technological Feasibility:**

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing

consultation, coordination and information and updates on its website.

**Small Business and Local Government Participation:**

The Department will work with local governments to provide technical information concerning the newly-listed synthetic cannabinoids.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.

### **Rural Area Flexibility Analysis**

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

## **Job Impact Statement**

### **Nature of the Impact:**

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

### **Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

### **Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

### **Minimizing Adverse Impact:**

Not applicable.



## **Emergency Justification**

“Synthetic cannabinoids” encompass a wide variety of chemicals that are designed to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients are also presenting with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a “not for human consumption” label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. When 10 NYCRR Part 9 was first promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19 years of age which is consistent with the results of a 2011 Monitoring the Future national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid

during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at that time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of specified synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local

governments to control these dangerous chemicals.

Because synthetic cannabinoids continue to be an urgent public health issue, and because the Department has learned of additional specific synthetic cannabinoids since the regulation was first promulgated, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6), empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

## **Summary of Express Terms**

The regulatory proposal would revise Part 16 of 10 NYCRR as described in more detail below. Section 16.59 is added to cover radiation safety and quality assurance on Computed Tomography (CT) equipment. Section 16.59 (a) of the proposed regulation specifies a number of definitions used to describe CT systems and their operations. The next four sections, respectively, describe: physical and system requirements (16.59(b)); patient communication and viewing requirements (16.59(c)); CT system calibration requirements (16.59(d)); and quality assurance testing requirements (16.59(e)). Part 16.59(f) contains requirements for operations including a requirement for accreditation. One of the requirements is accreditation by a nationally recognized accrediting body that is acceptable to the Department. Currently the American College of Radiology (ACR), the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the Intersocietal Accreditation Commission (IAC) are considered acceptable to the Department. This is consistent with the accrediting bodies that CMS accepts. This accreditation requires the registered facility to have one of these three organizations perform a review that includes the physical layout of the facility, policy and procedures, quality assurance and image assessment. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) required the Center for Medicare and Medicaid Services (CMS) to designate accrediting bodies for imaging centers that perform CT (as well as certain other imaging studies). Accreditation is now a requirement under CMS regulation for all non-hospital providers to receive the technical component payment, and these three organizations (ACR, JCAHO, and IAC) are approved by CMS.

Section 16.25 is that subsection of Part 16 that requires the recording or reporting of medical misadministrations. This part is amended to include an additional reporting requirement for CT misadministrations when the wrong patient is scanned, when the wrong part of the body is scanned or when there is damage to an organ or organ system including erythema and/or hair loss.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Section 16.25 of Part 16 is amended and Section 16.59 is added to Part 16 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 16.25(a) is amended to add the following to the existing section:

16.25 Misadministrations.

(a) A medical misadministration shall be the administration of:

\* \* \*

(9) A CT scan in which any of the following occur:

(a) A CT scan is performed on the wrong person;

(b) A CT scan is performed on the wrong body part.

(10) a CT scan that results in damage to an organ, organ system or results in hair loss or erythema as determined by a physician.

16.25 (b) Records and Reports of Misadministrations.

(3) A misadministration described in 16.25 (a) (9) or (10) shall be reported to the Department in writing within 15 days of occurrence.

A new section 16.59 is added to read as follows:

## 16. 59 USE OF COMPUTED TOMOGRAPHY EQUIPMENT

### (a) Definitions

(1) “Computed tomography (CT)” scan and “computerized axial tomography (CAT)” scan refer to an imaging procedure that uses x-rays to create cross-sectional images of the human body.

(2) “Computed tomography dose index” (CTDI) means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan where the dose profile is centered around  $z = 0$  and for a multiple tomogram system, the scan increment between adjacent scans is  $nT$ ;

$$CTDI = 1/nT \int_{-T}^{+T} D(z) dz$$

$z$  = position along a line perpendicular to the tomographic plane;

$D(z)$  = Dose at position  $z$ ;

$T$  = Nominal tomographic section thickness;

$n$  = Number of tomograms produced in a single scan

(3) “CT x-ray system” is technology that is used to perform CT scans and includes but is not limited to, a control panel, image display device, gantry, x-ray tube, collimating device with filters, high voltage transformer and a data acquisition system.

(4) “CT scanner” refers to technology used to perform and interpret CT scans and includes, but is not limited to, a control panel, gantry, high voltage generator, x-ray tube, table and display devices that are used for image interpretation.

(5) “CTDI<sub>100</sub>” is the dose measurement made with a 16cm diameter (head/pediatric body) or a 32cm diameter (body) acrylic phantom. The measurements are made utilizing a 100mm long pencil ionization chamber. Readings are made with the ion chamber in both the center (axial or central dose) position and near surface slots of the phantom (the peripheral dose).

(6) “CTDI<sub>w</sub>”, the weighted or blended dose, is calculated by adding together two-thirds of the CTDI<sub>100</sub> peripheral dose with one-third of the CTDI<sub>100</sub> axial or center dose. ( $CTDI_w = 2/3 CTDI_{100} \text{ peripheral} + 1/3 CTDI_{100} \text{ axial or center}$ ). CTDI<sub>w</sub> represents an average dose in the x and y planes.

(7) “CTDI<sub>VOL</sub>” represents the integrated dose over the total volume that is irradiated,  $CTDI_{VOL} = (1/PITCH) \times (CTDI_w)$ , where “Pitch” is defined as the table travel per rotation divided by the collimation of the x-ray beam. CTDI<sub>VOL</sub> represents the average dose in the x, y and z planes.



(8) "CT conditions of operation" means all selectable parameters governing the operation of a CT x-ray system including nominal tomographic section thickness, filtration, and the technique factors.

(9) "CT dosimetry phantom" means the phantom used for determination of the dose delivered by a CT x-ray system. The phantom shall be a right circular cylinder of polymethyl-methacrylate of density  $1.19 \pm 0.01$  grams per cubic centimeter. The phantom shall be at least 14 centimeters in length and shall have diameters of 32.0 centimeters for testing any CT system designed to image any section of the body (whole body scanners) and 16.0 centimeters for any system designed to image the head (head scanners) or for any whole body scanner operated in the head scanning mode. The phantom shall provide means for the placement of a dosimeter(s) along its axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom.

(10) "Dose length product" (DLP) is defined as the  $CTDI_{vol}$  times the irradiated length of the body for the whole series of images that are taken during a CT scan.

(11) "Picture Archiving and Communication System (PACS)" is a medical imaging technology that provides access to and storage for medical images from multiple modalities. It is comprised of an image acquisition system, display, network and data storage or archiving system.

(12) "Reference plane" means a plane which is displaced from and parallel to the tomographic plane.

(13) "Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram or a series of tomograms.

(14) "Scan increment" means the amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(15) "Technique" means the settings selected on the control panel of the equipment and may include the position of the x-ray tube, image intensifier and patient.

(16) "Technique chart" means a chart that lists the standard settings and positions for a given technique.

(17) "Tomogram" is an image of a tissue plane or section of tissue.

(18) "Tomographic plane" means that geometric plane which the manufacturer identified as corresponding to the output tomogram.

(19) "Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

(b) CT X-Ray System Equipment Requirements.

- (1) Each control panel and gantry of a CT x-ray system shall include visual signals that indicate to the operator of the CT x-ray system whenever x-rays are being produced and when x-ray production is terminated, and, if applicable, whether the shutter is open or closed.
- (2) Each CT x-ray system shall be equipped with a control that allows the operator of the CT x-ray system to terminate the x-ray exposure at any time during a scan, or series of scans, when the exposure time is greater than one-half second duration.
- (3) Each CT x-ray system shall be designed such that the CT conditions of operation to be used during a scan or a scan sequence are indicated prior to the initiation of a scan or a scan sequence.
- (4) Each CT x-ray system shall include a clearly and conspicuously labeled emergency shutoff button or switch.
- (5) Premature termination of the x-ray exposure by the operator shall necessitate resetting of the CT conditions of operation by the operator prior to the initiation of another scan.

(c) Patient communication and viewing requirements.

- (1) Each CT x-ray system shall be equipped to allow two-way aural communication between the patient and the operator at the control panel.
- (2) Each CT x-ray system shall be equipped with windows, mirrors, closed-circuit television, or an equivalent to permit continuous visual observation of the patient during CT scanning by the CT operator from the control panel.
- (3) When the primary viewing system is by electronic means, an alternate viewing system (which may be electronic) shall be available for use in the event of failure of the primary viewing system.

(d) Calibration.

- (1) Each registrant shall ensure that the calibration of the radiation output of each CT x-ray system that it operates is performed by, or under the direction of, a licensed medical physicist.
- (2) Each registrant shall maintain and make available for review by the Department, on the premises of its radiation installation where a CT x-ray system is located written procedures for the appropriate calibration of the CT x-ray system.

(3) After initial installation, the CT x-ray system shall be calibrated prior to its use on human beings and recalibrated at least within every 14 months thereafter. Any change or replacement of components of a CT x-ray system which could cause a change in the radiation output will require a recalibration within 30 days of component installation by a licensed medical physicist operating within their scope of practice.

(4) The calibration of the radiation output of a CT x-ray system shall be performed with a calibrated dosimetry system. This system shall have been calibrated either by the National Institute of Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL) and traceable to NIST. The calibration shall have been performed within the previous 24 months and after any servicing that might have affected system calibration.

(5) CT dosimetry phantom(s) shall be used in determining the radiation output of each CT x-ray system. Such phantom(s) shall meet the following specifications and conditions of use:

(i) Any effects on the doses measured because of the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom; and

(ii) All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuation materials present.

(iii) The requirements of subparagraphs (i) and (ii) of this paragraph can also be met by using an alternative method of radiation measurement and calculation published in the peer-reviewed scientific literature and acceptable to the Department.

(6) Records of calibrations performed shall be maintained for a period of three (3) years at the radiation installation where the CT is located.

(e) Quality Assurance Testing

(1) Each registrant shall maintain a Quality Assurance (QA) manual that shall contain written procedures for all testing and shall meet the requirements specified in this section and section 16.23(a)(1). The CT Quality Assurance procedures shall have been developed under the direction of a licensed medical physicist or radiologist.

(2) The QA procedures shall incorporate the use of one or more image quality dosimetry phantoms or the phantom supplied by the original equipment manufacturer which have the capability of providing an indication of contrast scale, noise, nominal tomographic section thickness, the resolution capability of the system for low and

high contrast objects, and measuring the mean CT Number for water or other reference material. All of these image quality parameters shall be evaluated at least annually by a licensed medical physicist.

(3) Written records of the QA checks performed by the registrant shall be maintained for review by the Department for a period of at least three (3) years.

(4) QA checks shall include the following:

(a) Images obtained with the CT dosimetry phantom(s) using the same processing mode and CT conditions of operation as are used to perform calibrations. The images shall be retained as photographic copies or as electronic copies stored within the CT x-ray system or stored on the PACS.

(b) Dose assessment for the most common CT examinations that are performed on the system for which reference levels have been published by the American College of Radiology (ACR), the American Association of Physicists in Medicine (AAPM) or the National Council on Radiation Protection and Measurements (NCRP) for pediatric heads, pediatric abdomens, adult heads and adult abdomens.

(c) An evaluation of image quality.

(f) Operating Procedures and Policies

- (1) The CT x-ray system shall not be operated on a human being except by a physician or by a radiologic technologist licensed pursuant to Article 35 of the Public Health Law who has been specifically trained in its operation.
  
- (2) The registrant shall ensure that each CT x-ray system has a radiation protection survey or other measurement and assessment of exposure to persons in controlled and non-controlled areas made at the time of installation. Additional radiation protection surveys shall be done after any change in the radiation installation or equipment which might cause a significant increase in radiation hazard.
  
- (3) Each CT x-ray system shall have available at the control panel written information regarding the operation and calibration of the CT x-ray system. Such information shall include:
  - (i) Dates of the latest calibration and QC checks and the location within the facility where the results of those tests may be obtained;
  
  - (ii) Instructions on the use of the CT dosimetry phantom(s) including a schedule of QC tests that are appropriate for the system as determined by the manufacturer, allowable variations for the indicated parameters, and the results of at least the most recent spot checks conducted on the system;



- (iii) A current set of default protocols are available at the control panel (either electronically or as a document) which specifies for each routine examination the CT conditions of operation and the slice thickness, spacing between slices and/or pitch;
- (iv) A list of techniques optimized for the body part being imaged to obtain a quality image and to ensure that the lowest amount of radiation is used as consistent with good medical practice.

(4) If the QC testing on the CT x-ray system identifies that a system operating parameter has exceeded a tolerance as specified in the Quality Assurance manual, use of the CT x-ray system on patients shall be limited to those exceptions permitted by established written instructions of the licensed medical physicist or radiologist. Upon completion of corrective action, the QC testing shall be repeated to verify that the system is back within tolerance.

(5) Commencing one (1) year after the effective date of these regulations, each registrant performing CT scans on human beings shall ensure that for each scan, the radiation dose delivered by the scanner to a reference phantom or the dose received by the patient is saved and recorded. The dose delivered shall be recorded as Computed Tomography Dose Index volume (CTDI<sub>vol</sub>), dose length product (DLP) or other dosimetry metric published in the peer reviewed scientific literature and acceptable to the Department. The dose received by a patient shall be

recorded as organ dose or other dosimetry metric published in the peer reviewed scientific literature and acceptable to the Department.

(6) The displayed dose shall be verified on an annual basis by or under the supervision of a licensed medical physicist to ensure that the equipment manufacturer's displayed dose is within 20% of the measured dose.

(7) Eighteen months after the effective date of these regulations, each current registrant that performs diagnostic CT scans on human beings shall be accredited by a nationally recognized accreditation program that is acceptable to the Department. A facility performing CT that loses their existing accreditation or a registrant or licensee that fails to obtain accreditation must report this fact within 30 days to the Department. After the effective date of these regulations new licensees or registrants will have 18 months to become accredited, but must demonstrate that they have initiated the accreditation process within 90 days of the start of operations.

(8) Each registrant that performs CT scans on human beings shall establish and implement a policy and a procedure to ensure that:

(i) a request for a CT scan originates from a physician or other authorized health care practitioner familiar with the patient's clinical condition; and

(ii) the request includes sufficient information to demonstrate the medical indication for the CT examination and allow for the proper performance and interpretation of the CT scan.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council is authorized by § 225(4) of the Public Health Law (PHL) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) & (q) and 201(1)(r) authorize SSC regulations to protect the public from the adverse effects of ionizing radiation. These statutory provisions authorize the Department, pursuant to 10 NYCRR Part 16, to license or register health care providers to use radioactive materials or ionizing radiation emitting equipment on patients.

The federal Atomic Energy Act of 1954, (the Act), (codified at 42 USC §§ 2021 et. seq.) authorizes the U.S. Nuclear Regulatory Commission (NRC) to regulate the use of radioactive materials. The Act also authorizes "Agreement States" to regulate the use of radioactive materials in lieu of the NRC, provided that the "Agreement State" promulgates regulations that are comparable to or exceed NRC's regulatory standards. New York State is an "Agreement State" within the meaning of the Act. New York's regulatory standards for the use of radioactive materials in 10 NYCRR Part 16 must therefore meet or exceed comparable NRC regulatory standards. The Act governs only the use of radioactive materials: it does not apply to x-rays or radiation therapy equipment that emit only x-rays.

### **Legislative Objectives:**

The legislative intent of PHL Sections 225(5)(p) & (q) and 201(1)(r) is to protect the public from the adverse effects of ionizing radiation. Establishing regulations to ensure safe and effective clinical uses of radiation producing equipment is consistent with this legislative objective.

**Needs and Benefits:**

DOH's regulations are designed to require the delivery of quality care while protecting people and the environment from the harmful effects of radiation. In recent years, technology and equipment used for diagnostic medical imaging has become significantly more complex. Computed Tomography delivers high quality imaging that is of significant benefit to patients and for this reason it represents the dominant imaging modality. However, it also represents the largest contributor to an increase in population radiation exposure based on reports from the National Council on Radiation Protection and Measurements. The usage of CT scans has more than tripled in the past decade and currently there are about 80 million CT scans in the US each year.

The problems that have been documented with CT scans in the past several years reflect a lack of quality assurance and/or a lack of administrative controls which these regulations seek to implement. These regulations seek to ensure high quality CT imaging that is appropriate with respect to professional bodies such as the American College of Radiology's (ACR) recommendations on appropriateness criteria. These regulations will implement Quality Assurance (QA) requirements that are already being voluntarily implemented by a majority of facilities in New York State.

Currently the only provisions in the State Sanitary Code that apply are general quality assurance regulations that do not adequately describe the operations or quality assurance requirements for the use of CT equipment.

**Costs:**

The Department estimates that many regulated parties that use Computed Tomography will not incur any additional costs to comply with the proposed addition of 10 NYCRR § 16.59. There are approximately 440 facilities that are registered with the DOH that operate one or more CT scanners for diagnostic purposes on human beings. Approximately 75% of these sites already have been accredited by bodies currently accepted by Centers for Medicare and Medicaid Services (CMS), (American College of Radiology, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and IAC). The initial costs of this accreditation vary based on which of the three organizations are used, however the ACR is the most popular and in general the least expensive for a facility that only has a single CT scanner. The costs of a three year accreditation from the ACR will average \$7550, which includes: (i) the typical fees for a consulting physicist (average of \$1750); (ii) a \$2500 accreditation fee from the ACR; and (iii) \$3300 for the purchase of an ACR phantom if the facility does not already have one. Facilities that already have the ACR phantom (or for reaccreditation) will not need to purchase another phantom.

The other proposed additions in 10 NYCRR §16.59 will impose little or no cost to regulated parties because existing facility staff can comply with the new quality assurance requirements.

**Local Government Mandates:**

There are fourteen hospitals that fall under this category, including three State University hospitals, a Department operated hospital and ten hospitals operated by public benefit corporations. Of these fourteen hospitals, ten are already accredited in CT scanning. The remaining four hospitals would incur additional costs to comply with the new regulatory

requirement to be certified in CT (approximately \$9,500 for each three year period). No other additional costs are associated with implementation of these requirements. Registrants and licensees, including the hospitals operated by state and local governments, are currently required to retain all quality assurance documents for review by the Department. The additional records and filing is estimated to be a small incremental amount. Affected parties will need to complete an application for accreditation initially and every three years thereafter.

**Paperwork:**

DOH regulations (10 NYCRR Part 16) require registrants and licensees to maintain a variety of records relating to the use of ionizing radiation for review by the Department. The Department estimates that licensees and registrants may have a small amount of additional documentation to create, maintain or file. Affected parties will have to complete an application for CT accreditation. The accrediting bodies are transitioning to an online application process to minimize time and effort for regulated parties seeking accreditation.

The proposed regulations will not affect registration documents issued by the Department to current registrants. The Department plans to provide updated QA guidance when these regulations are adopted.

**Duplication:**

There is no duplication of the proposed regulatory requirements by any federal, state or local agency for licensees, registrants or authorized users subject to 10 NYCRR Part 16. New York State entered into an agreement with the federal government on October 15, 1962 by which the federal government discontinued its regulatory authority over the use of radioactive materials and New York assumed such authority. The Atomic Energy Act does not govern use of x-ray emitting equipment.

**Alternatives:**

One alternative to adopting these regulations is to take no action and maintain the existing structure that relies on DOH guidance and voluntary compliance. However, while rapid advances in CT technology have produced better healthcare outcomes in many cases, there has been a downside to this increased use – particularly, patients experiencing radiation burns as a result of the improper use of CT scans. The New York Times and the Los Angeles Times have both reported on CT-related medical problems that were caused by the failures of both regulators and medical personnel. The scientific press also has numerous articles documenting overutilization of CT and quality assurance failures. The general population and the scientific community are aware that New York State currently lacks adequate quality assurance regulations and monitoring. The development of these proposed regulations, after consultation with radiologists, physicists and several professional organizations including the Hospital Association of New York State and the New York State Radiological Society, is intended to minimize future CT-related medical events in New York State. New York is not the only state to strengthen its regulation of this area: Texas and California have adopted regulations governing CT quality assurance (California) and reporting of events and monitoring of patient dose (Texas).

As a result, there are no suitable alternatives to the proposed addition of 10 NYCRR §16.59. There are no alternative requirements that would meet the objectives of implementing appropriate Quality Assurance on CT scanners.

**Federal Standards:**

These proposed revisions to 10 NYCRR §16.59 do not conflict with any federal regulations. Existing federal regulations relate only to the manufacture and distribution of radiation producing equipment and not to its operations.

**Compliance Schedule:**

The proposed regulatory amendments will be effective upon publication of the Notice of Adoption in the State Register, except for the requirements in proposed 10 NYCRR §16.59(f)(5) relating to accreditation in computed tomography. Proposed 10 NYCRR §16.59(f)(5) requires that registrants apply for accreditation by one of the previously mentioned organizations and that such accreditation becomes effective within one year of the effective date of the proposed regulation.

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## **Regulatory Flexibility Analysis for Small Businesses and Local Governments**

### **Effect on Small Business:**

The Department has issued registrations to approximately 440 facilities for the use of Computed Tomography equipment of which an estimated 230 are small business. Specifically these are private practice or group practice physicians who own and operate their own CT scanner. Some of these registrants would be affected by the proposed revisions to 10 NYCRR §16.59, in particular the requirement for accreditation may affect some businesses. However, as of January 1, 2012, the Centers for Medicare and Medicaid Services (CMS) required that all non-hospital providers of the technical component of CT imaging must meet the accreditation requirements in Section 135 (a) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Therefore the majority of small business, private practice physicians have or are in the process of obtaining accreditation for CT.

### **Compliance Requirements:**

Licenses and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly. Those who are not currently accredited will need to do so within 12 months of the effective date of the rule.

### **Professional Services:**

The majority of large facilities have in-house staff who will conduct the required QA and small facilities either contract with the manufacturer of the equipment or professional medical physicists that perform quality assurance testing for CT. The average cost for professional service for the accreditation component of these regulations ranges from \$1550 to \$1950 per CT, depending on location. This service would be required every three years.

**Capital Costs and Annual Costs of Compliance:**

The amortized annual cost is estimated to be approximately \$2500 per year for accreditation (based on a three-year accreditation cost of \$7550). However, approximately 75% of the facilities are currently accredited; therefore this regulation will not impose an additional cost. There are no capital costs mandated by this regulation directly, however, one of the three accrediting bodies requires the use of their own phantom at a cost of \$3300.

**Economic and Technology Feasibility:**

There are no capital costs or new technology required to comply with the proposed rule. Facilities that use the ACR as the accrediting body must have or purchase an ACR CT phantom. The use of some type of phantom is the industry standard for CT testing and evaluation.

**Minimizing Adverse Impact:**

Facilities will have 12 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee.

**Small Business Input:**

A copy of the draft proposed rule was sent via email to individuals representing the Healthcare Association of New York State (HANYYS), the New York state chapter of the ACR, physicists throughout the state, the NYS Society of Radiological Sciences and other interested parties including private practice physicians. The majority of the comments were technical clarifications that have been incorporated in the currently proposed regulations. The Department is developing guidance to assist the affected facilities in implementing and complying with the new requirements.

## **Rural Area Flexibility Analysis**

### **Types and Estimated Numbers of Rural Areas:**

There are 106 affected facilities with approximately 120 CT units located in 40 of the 43 rural counties in New York State. Including the total from 11 other counties that have a population of 200,000 or greater, and towns with population densities of 150 persons or fewer per square mile, brings the total to 309 registrants and 426 CT scanners. The statewide totals were 436 registrants and 596 CT scanners for facilities outside of New York City.

### **Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:**

A misadministration involving a CT-scan must be reported to the Department in writing within 15 days of occurrence. CT misadministrations are distinguished from events involving other diagnostic imaging modalities because of the greater risk associated with the radiation dose and contrast agents used in CTs. No additional professional service costs are anticipated for already accredited facilities. Facilities will be required to maintain records of quality assurance test results and accreditation documents for review by the Department's inspectors. Compliance with the recordkeeping requirements will require only a minor incremental amount of time and effort for affected facilities.

### **Cost:**

The cost to comply with the accreditation requirement will be an initial \$7550 every three years. This will be a new cost to approximately 25% of the facilities that will be subject to the proposed 10 NYCRR §16.59, because 75% of the facilities are either currently accredited or have an application for accreditation pending. Facilities that are currently accredited or have an application pending have done so for a number of reasons. However the main reason facilities have pursued accreditation is to meet the 2012 CMS requirements for Medicare Part B payments.

**Minimizing Adverse Impact:**

Facilities will have 12 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee.

**Rural Area Participation:**

A copy of the proposed regulations was sent via e-mail to members of the New York State chapter of the American College of Radiology and to members of the American Association of Physicists in Medicine for review. The only comments received back were of a technical nature requiring clarification of the proposal. No comments were received objecting to the cost of accreditation.

## **Job Impact Statement**

### **Nature of Impact:**

It is anticipated that no jobs will be adversely affected by this rule. Diagnostic imaging providers in New York will need to become familiar with, and implement the new regulatory requirements set forth in the proposed 10 NYCRR §16.59. The Department does not expect that the new regulatory requirements would significantly change the training or experience requirements of radiological technologists or physicians. The Department anticipates that few if any persons will be adversely affected. Facility staff, specifically those designated as the radiation safety officer, medical physicist, radiological technologist especially CT technologists will need to become familiar with the new requirements.

### **Categories and Numbers Affected:**

There are approximately 440 facilities with a total of about 600 CT units that would be subject to the rule. The registered facilities include 150 hospitals or their satellite facilities with approximately 300 of the CT units. The other 300 registrants (typically with only 1 CT at each site) represent individual or group practice physicians.

### **Regions of Adverse Impact:**

No areas will be adversely affected.

### **Minimizing Adverse Impact:**

There are no alternatives to the proposed regulations. The Department will revise guidance to assist all licensees, including those in rural areas, with implementation of the proposed regulations.

**Self-Employment Opportunities:**

The rule is expected to have minimal impact on self-employment opportunities since the majority of providers that will be affected by the rule are not sole proprietorships.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 576 and 587 of the Public Health Law, Sections 58-1.8, 58-8.4 and 34-2.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are amended, to be effective upon publication of a Notice of Adoption in the State Register, as follows:

Section 58-1.8 is amended as follows:

58-1.8 Results of tests to be reported only to physicians or other authorized persons. No person shall report the result of any test, examination or analysis of a specimen submitted for evidence of human disease or medical condition except to a physician, his agent, or other person authorized by law to employ the results thereof in the conduct of his practice or in the fulfillment of his official duties. [Reports shall not be issued to the patients concerned except with the written consent of the physician or other authorized person, except that information concerning blood type and Rh factor may be provided in writing to the individual whose blood was tested without the consent of the individual's physician.] Upon request by a patient or the patient's personal representative, clinical laboratories may provide a patient access to completed test reports that can be identified as belonging to that patient as provided in section 34-2.11 of this Title.

Section 58-1.9 is amended as follows:

58-1.9 Testing to be done on premises except in certain instances. All specimens accepted by a laboratory for specified tests shall be tested on its premises. However, specimens for infrequently performed tests or those not included within specialties or subspecialties stated on its permit or those requiring specialized equipment and skill may be forwarded to and accepted by another laboratory under permit issued by the commissioner or to a laboratory which is operated by a government agency or a nonprofit research institution or to any other laboratory approved by the department. The reports of the results of such tests shall be sent by the testing laboratory to the forwarding laboratory, except that the forwarding laboratory may authorize the testing laboratory to send the report [directly to the physician or other authorized person who requested the test] as provided in section 58-1.8 of this Part, in which event the testing laboratory shall send a duplicate of the said report to the forwarding laboratory. Where the results of a test have been reported to it by the testing laboratory, the forwarding laboratory shall send a transcript of such report [to the physician or other authorized person who requested the test] as provided in section 58-1.8 of this Part and shall indicate thereon the name of the laboratory actually performing the test. [In no event shall any report of the result of any test or transcript thereof be sent to the patient concerned except with the written consent of the physician or other authorized person who requested the test.]

Subdivision (a) of section 58-8.4 is amended as follows:



(a) No clinical laboratory shall notify a physician or other person legally authorized to receive the result that an HIV test is positive solely on the basis of HIV antibody screening, except that a clinical laboratory may report a preliminary finding of HIV infection [pursuant to the written request of a physician or other person legally authorized to receive the test results] as provided in section 58-1.8 of this Part. Results for specimens found non-reactive by HIV antibody screening may be reported to the physician who ordered the testing or other person legally authorized to receive the result.

Subdivision (b) of section 34-2.11 is amended as follows:

(b) A clinical laboratory shall not communicate to a patient of a referring health services purveyor the results of a clinical laboratory test, including, but not limited to, a Pap smear. A clinical laboratory shall not prepare such communication for the health services purveyor to send, or otherwise facilitate the preparation or sending of such communication by the health services purveyor. Such communication or its facilitation shall be deemed consideration given for referral of specimens for performance of clinical laboratory services and is prohibited, except that:

(1) a clinical laboratory may communicate [to] in writing to the patient (by mail or electronically) an accurate and complete account of the result of the laboratory test

along with information required to be included in a report of test results pursuant to Subpart 58-1 of this Title under the following circumstances:

[(i) the referring health services purveyor authorized by law to order and use the results of laboratory tests has provided affirmative written authorization (on paper or electronically), which specifically names the patient;]

[(ii)] (i) the laboratory test results have already been, or are simultaneously being communicated to the referring health services purveyor authorized by law to order and use the results of laboratory tests;

[(iii)] (ii) the clinical laboratory advises the patient that the referring health services purveyor authorized by law to order and use the results of laboratory tests has received or is receiving the test results;

[(iv)] (iii) the clinical laboratory shall include, in the communication to the patient, a clear statement, presented in a prominent manner, to the effect that the communication should not be viewed as medical advice and is not meant to replace direct communication with a physician or other health service purveyor;

[(v)] (iv) the clinical laboratory directs the patient's inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor; and

[(vi)] (v) the communication to the patient does not include any information which would be consideration given for referral of specimens, including, but not limited to, medical advice specifically directed at the patient concerning the patient's condition, including diagnosis or treatment of the patient's condition.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) Sections 576 and 587 set forth the duties and powers of the department related to the operation of clinical laboratories and their business practices. PHL Sections 576 and 587 also include authority for the adoption of regulations guiding the operation of clinical laboratories and blood banks including, but not limited to, laboratory reporting.

### **Legislative Objectives:**

The legislature enacted New York State PHL Article 5, Title V, to promote the public health, safety and welfare by requiring the licensure of clinical laboratories and blood banks, by establishing minimum qualifications for directors, and by requiring that the performance of all procedures employed by clinical laboratories and blood banks meet minimum standards accepted and approved by the department. PHL Sections 576 and 587 authorize the Department to promulgate regulations providing guidance relative to the proper operations of a clinical laboratory. Regulations reflect the complexity of laboratory test methods and cover all phases of laboratory testing, including the reporting of laboratory test results. PHL Article 5, Title VI relates to business practices, ethics and consumer protections.

10 NYCRR Subparts 58-1 (Clinical Laboratories), 58-8 (HIV Testing) and 34-2 (Laboratory Business Practices) currently state that laboratory test results cannot be reported directly to the patient unless written authorization is first provided by the

physician or authorized person. These requirements are described in 10 NYCRR § 58-1.8 (Results of tests to be reported only to physicians or other authorized persons); 10 NYCRR § 58-1.9 (Testing to be done on premises except in certain instances); 10 NYCRR § 58-8.4 (HIV results reporting requirements); and 10 NYCRR § 34-2.11 (Recall letters and reporting of test results).

**Needs and Benefits:**

The right to access personal health information, including laboratory results, is a powerful tool towards allowing patients to track their health progress, become engaged decision makers with the guidance of health care professionals and comply with important treatment plans. On February 6, 2014, the Federal Department of Health and Human Services (HHS) published amendments to 42 CFR Part 493 and 45 CFR Part 164 that allow patients to access their test results directly from a laboratory (see <http://www.gpo.gov/fdsys/pkg/FR-2014-02-06/pdf/2014-02280.pdf>). The new Federal rule became effective on April 7, 2014, with a compliance date of October 6, 2014. Stakeholders who commented on the amendments felt that federal regulations were a barrier that prevented patients from having an active role in their personal health care decisions and that the amendments would empower patients to take an active role in managing their health and health care. While patients historically have had the right under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rules) to access their own health records, the rule had excluded access to laboratory test results. The February 6th amendments removed the exclusion in 45 CFR §

164.524(a)(1) and amended CLIA regulations at 42 CFR § 493.1291(l) to specify that “Upon request by a patient (or the patient’s personal representative), the laboratory may provide patients, their personal representatives, and those persons specified under 45 CFR 164.524(c)(3)(ii), as applicable, with access to completed test reports that, using the laboratory’s authentication process, can be identified as belonging to that patient.” Although the use of the word “may” in 42 CFR 493.1291(l) does not require a clinical laboratory to provide a patient access to their completed test report, HHS emphasized that it is important to read the amended CLIA regulation in concert with the changes to the HIPAA Privacy Rule at 45 CFR Part 164. When taken together, the amendments will require HIPAA covered laboratories to provide individuals, upon request, with access to their laboratory test reports. A laboratory, as a health care provider, is only a HIPAA covered entity if it conducts one or more covered transactions electronically, such as transmitting health care claims or equivalent encounter information to a health plan, requesting prior authorization from a health plan for a health care item or service it wishes to provide to an individual with coverage under the plan, or sending an eligibility inquiry to a health plan to confirm an individual’s coverage under that plan. As described by HHS, these amendments will result in the preemption of a number of state laws that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider’s consent because the state laws now would be contrary to the access provision of the HIPAA Privacy Rule mandating direct access by the individual. Therefore, 10 NYCRR § 58-1.8, 10

NYCRR § 58-1.9, 10 NYCRR § 58-8.4 and 10 NYCRR § 34-2.11 are being amended to be consistent with the new federal rules.

## **Costs**

### **Costs to Private Regulated Parties:**

HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records. Clinical laboratories will incur costs to implement processes to allow patients access to their test reports as a consequence of the amendments to the federal rules. Under HIPAA privacy rules, HIPAA covered entities will be allowed to impose on the individual a reasonable, cost-based fee for providing access to their test results, including the cost of supplies for and labor of copying the requested information. Although clinical laboratories will incur costs to implement processes to allow patients access to their test reports as a consequence of the amendments to the federal rules, the amendments to 10 NYCRR § 58-1.8, 10 NYCRR § 58-1.9, 10 NYCRR § 58-8.4 and 10 NYCRR § 34-2.11 are simply making the State regulations consistent with the new federal rules.

**Costs for Implementation and Administration of the Rule:**

**Costs to State Government:**

No new costs would be incurred by state government.

**Costs to the Department:**

No new costs would be incurred by the Department of Health.

**Costs to Local Government:**

To the extent that local governments operate clinical laboratories they may incur the same costs as private regulated parties.

**Local Government Mandates:**

The proposed regulation complies with federal policy and will impose new mandates on any clinical laboratory operated by a county, city, town or village government.

**Paperwork:**

There will be an increase in paperwork attributable to activities related to providing patients with direct access to test results. The increase will be dependent upon the number of requests received by a laboratory and if a laboratory uses paper- or electronic-based systems for the reporting of test results.

**Duplication:**

These rules do not duplicate any other law, rule or regulation.



**Alternative Approaches:**

There are no viable alternatives to this regulatory proposal. This proposal conforms state regulations to federal regulations.

**Federal Standards:**

The amendments to 10 NYCRR § 58-1.8, § 58-8.4, and § 34-2.11 are being made to be consistent with recent changes in the Code of Federal Regulations (CFR), specifically 42 CFR Part 493 and 45 CFR Part 164. In the absence of these amendments, New York State regulations would be contrary to the access provision of the HIPAA Privacy Rule mandating direct access by the individual.

**Compliance Schedule:**

The amended regulations will become effective upon publication of a Notice of Adoption in the New York State Register. Clinical laboratories regulated by New York State (NYS) are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the Federal amendments. Consequently, regulated parties will be able to comply with changes to 10 NYCRR § 58-1.8 as of their effective date.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

In July 2014, the Department's Clinical Laboratory Evaluation Program (CLEP) issued permits to 933 clinical laboratories. Of these, 372 are located out of State and do not qualify as small businesses. Of the remaining 561 laboratories located in New York State, 51 are governmental laboratories, and 166 are estimated to be small businesses.

### **Compliance Requirements:**

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. Impacted clinical laboratories that are small businesses or governmental laboratories will need to develop mechanisms to provide patients access to laboratory test results. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports.

### **Professional Services:**

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient

requests for access to test reports. Additionally, HHS assumed an hourly rate for a management-level employee to be \$50.06.

**Compliance Costs:**

The proposed rules will not result in any additional costs beyond those that are incurred as a consequence of the changes to the federal rule. HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records and HIPAA privacy rules currently permit HIPAA covered entities to charge an individual reasonable cost-based fee for providing access to health information.

**Economic and Technological Feasibility:**

The proposed regulations will not present economic or technological difficulties to any small businesses and local governments affected by these amendments. The technical infrastructure for reporting laboratory test results is already in place.

**Minimizing Adverse Impact:**

The changes to the federal rules conflict with state regulations that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider's consent. Therefore, the Department of Health did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government.

**Small Business and Local Government Participation:**

Clinical laboratories designated as a small business or governmental laboratories by New York State (NYS) are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the federal rules. Discussions on this topic have also been held with Greater New York Hospital Association and the College of American Pathologists.

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and estimated numbers of rural areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 87 clinical laboratories are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

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

**Compliance Requirements:**

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. Impacted clinical laboratories that are in rural areas will need to develop mechanisms to provide patients access to laboratory test results. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports.

**Professional Services:**

The proposed rule will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient

requests for access to test reports. Additionally, HHS assumed an hourly rate for a management-level employee to be \$50.06.

**Compliance Costs:**

The proposed rules will not result in any additional costs beyond those that are incurred as a consequence of the changes to the federal rule. HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records and HIPAA privacy rules currently permit HIPAA covered entities to charge an individual reasonable cost-based fee for providing access to health information.

**Minimizing Adverse Impact:**

The changes to the federal rules conflict with state regulations that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider's consent. Therefore, the Department of Health did not consider alternate, less stringent compliance requirements, or regulatory exceptions for rural facilities.



**Opportunity for Rural Area Participation:**

Clinical laboratories located in rural areas are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the Federal amendments. Discussions on this topic have also been held with Greater New York Hospital Association and the College of American Pathologists.

## **STATEMENT IN LIEU OF JOB IMPACT STATEMENT**

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

Pursuant to the authority vested in the Public Health and Health Planning Council by Section 2803 of the Public Health Law, subject to the approval of the Commissioner of Health, Part 757 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 757 Chronic Renal Dialysis Services is REPEALED in its entirety, and New Part 757 is added as follows:

#### PART 757 CHRONIC RENAL DIALYSIS SERVICES

(Statutory authority: Public Health Law §2803)

Sec.

§757.1 Codes and standards.

§757.2 Additional requirements for chronic renal dialysis centers.

§757.3 Chronic renal dialysis center staffing.

§757.1 Codes and standards.

Operators of chronic renal dialysis centers shall comply with the codes and standards referred to in this section. Nothing herein shall preclude the operator of a chronic renal dialysis center from exceeding any codes and standards relating to the quality of care set forth in this Part. If a conflict occurs between the codes and standards set forth herein, or

between them and regulations found elsewhere in this Chapter, the operator of a chronic renal dialysis center shall comply with the more restrictive requirement. The following codes and standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. Copies of such codes and standards are available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies are also available from the publisher or issuing organization at the addresses listed below.

(a) Title 42 of the Code of Federal Regulations, Part 494, *Conditions for Coverage for End-Stage Renal Disease Facilities*, 2008 edition, including all standards incorporated therein. These regulations are published by the Office of the Federal Register National Archives and Records Administration. Copies may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D. C. 20402.

(b) In the document entitled "Guidelines for the Prevention of Intravascular Catheter Related Infections", the provisions entitled "Recommendations for Placement of Intravascular Catheters in Adults and Children", Parts I -IV; and "Central Venous Catheters, Including PICCs, Hemodialysis and Pulmonary Artery Catheters in Adult and Pediatric Patients", pages 16 through 18, Morbidity and Mortality Weekly Report, volume 51, number RR-10, August 9, 2002. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

(c) "Recommendation for Preventing Transmission of Infections Among Chronic Hemodialysis Patients", developed by the Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, volume 50, number RR05, April 27, 2001. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

§757.2 Additional requirements for chronic renal dialysis centers.

(a) Whenever referred to in this Part, the following definitions shall have the following meanings:

(1) *Dialysis station* means an individual patient treatment area that accommodates the dialysis equipment and the routine and emergency care indicated, and is sufficiently separate from other dialysis stations to afford protection from cross-contamination with blood-borne pathogens. A hemodialysis station shall be equipped with a chair or a bed, a hemodialysis machine, and access to a purified water source and dialysate concentrates.

(2) *End-Stage Renal Disease (ESRD) network* means entities contracted with the federal government that collect and share data and other information with the Centers for Medicare and Medicaid Services

(CMS), New York State and chronic renal dialysis centers within a specific geographic area.

(3) *Chronic renal dialysis center* means an ambulatory care facility approved by CMS to provide chronic renal dialysis services and licensed by the New York State Department of Health to provide such services.

(4) *Home dialysis* means dialysis provided at home by a patient or care partner who is trained by a registered professional nurse to deliver dialysis (peritoneal or hemodialysis) treatments at the patient's place of residence. The nurse responsible for home dialysis training must be a registered professional nurse who meets the licensure and practice requirements of New York State, has 12 months experience providing nursing care and 3 months experience working as a nurse in the specific dialysis modality (peritoneal or hemodialysis).

(5) *Dialysate* means aqueous fluid containing electrolytes and, usually, dextrose, which is intended to exchange solutes with blood during hemodialysis. It is the fluid made from water and concentrates delivered to the dialyzer by the dialysate supply system.

(6) *Product water* means water produced by a water treatment system or by an individual component of a system.

(b) Operators of chronic renal dialysis centers shall comply with Parts 751 and 752 of this Subchapter.

(c) The operator of a chronic renal dialysis center that provides pediatric services on other than an emergency basis, shall obtain pediatric nephrology consultation services with one or more board certified pediatric nephrologists. Such board certified pediatric nephrologist(s) shall follow current evidence based professionally accepted clinical practice standards for evaluating and monitoring the pediatric dialysis patients.

(d) Each chronic renal dialysis center certified for home dialysis services must ensure through its interdisciplinary team, that home dialysis services are at least equivalent to those provided to patients who receive such services at the chronic renal dialysis center, and meet all applicable requirements contained in Title 42 of the Code of Federal Regulations, Part 494, *Conditions for Coverage for End-Stage Renal Disease Facilities*, 2008 edition.

(e) Each chronic renal dialysis center shall ensure that its water treatment and dialysate supply systems protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminants that may be found in water and improperly prepared dialysate. Each chronic renal dialysis center shall develop, implement and comply with policies and procedures related to water treatment, dialysate, and reuse that are understandable and include the following:

- (1) sample of product water and a sample of dialysate shall have a microbiological examination at least once every month;
  - (2) sample of product water shall have a chemical examination at least once every three months; and
  - (3) water samples shall be examined by a laboratory licensed pursuant to Section 502 of the Public Health Law that is approved by the Department for the analysis of potable water.
- (f) Each chronic renal dialysis center shall ensure that dialysis stations meet the requirements set forth in subdivision (a) (1) of this section.
- (g) Each chronic renal dialysis center shall collaborate with its ESRD network, suppliers, utility service providers and the Department for surveys and for emergency preparedness, and shall also collaborate with other chronic renal dialysis centers to ensure that lifesaving dialysis services are available in the event of an emergency or disaster. The chronic renal dialysis center shall develop written policies and procedures that detail the actions it shall take and plan to be implemented in the event of an emergency or disaster.



§ 757.3 Chronic renal dialysis service staffing.

(a) In addition to other requirements that may be applicable to the operator as set forth in this Chapter, the operator of chronic renal dialysis center shall ensure that the center is adequately staffed with qualified personnel as described in and in accordance with this section.

(1) *Registered Professional Nurses.* All registered professional nurses (RNs) working in a chronic renal dialysis center shall hold an active New York State license to practice in accordance with Article 139 of the Education Law and its implementing regulations. At least one RN shall be present, on duty, and available to provide nursing services including nursing supervisory duties at all times when patients are present at the center.

(2) *Licensed Practical Nurse.* All licensed practical nurses (LPNs) working in a chronic renal dialysis center shall hold an active New York State license to practice in accordance with Article 139 of the Education Law and its implementing regulations. LPN responsibilities shall be consistent with the authorization and training provided by the center. In addition, LPNs practicing in a chronic renal dialysis center who have received training and demonstrated the competencies required by such chronic renal dialysis center may, if authorized by the LPNs' supervising RN, access and provide care to patients with central venous catheters. A supervising RN shall, in his or her sole discretion, determine whether an LPN has received the appropriate training and

demonstrated competencies as required by the center to provide care to patients with central venous catheters. All LPNs who are authorized to perform intravenous therapy procedures shall perform such procedures in accordance with the provisions set forth in Section 400.15 of this Title.

(3) *Qualified Social Worker.* The operator of chronic renal dialysis center shall have on staff, a qualified social worker who is licensed and registered by the New York State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW) as defined in and in accordance with Article 154 of the Education Law.

(4) *Patient Care (Dialysis) Technicians.* The operator of a chronic renal dialysis center shall ensure that all unlicensed staff who have responsibility for direct patient care meet or exceed the center's written policies and procedures that define the minimum experience and training qualifications of patient care technicians(PCTs) and perform such patient care only under the direction of an RN. The operator of a chronic renal dialysis center shall ensure that all PCTs that provide patient care at its center are certified by a CMS approved national commercial dialysis technician certification organization within 18 months post hire. Such PCTs must, under the direction of an RN, complete a training program approved by the medical director of the chronic renal dialysis center.

(b) The operator of chronic renal dialysis center shall comply with the following

requirements and shall annually review, approve and implement policies and procedures that include or address the following:

- (1) Non-catheter patient assessment and documentation must be completed by the RN within sixty (60) minutes of initiation of dialysis.
- (2) Catheter patient assessment and documentation must be completed by the RN within forty-five (45) minutes of initiation of dialysis;
- (3) All supervising RNs must be thoroughly familiar with and clearly understand the training and qualifications of LPNs under their supervision as well as the types of tasks that may be delegated to such LPNs at the chronic renal dialysis center. Supervising RNs shall determine, at their discretion, whether to delegate such tasks to the LPNs.
- (4) All unlicensed staff that has patient care responsibilities must be supervised by RNs.
- (5) Training, qualifications, practice, supervision and other requirements for all LPNs that may access central venous catheters. LPNs that may access central venous catheters must successfully complete an initial and thereafter an annual training program for central venous access which includes successful completion of a written examination and competency demonstration. This training must be approved by the operator's governing body and the medical director. Documentation of such training must be maintained by the chronic renal dialysis center and made available to the Department upon request.

LPNs who access central venous catheters must provide such care under the direction of an RN.

(6) The chronic renal dialysis center shall clearly define the minimum experience and training qualifications of all patient care technicians (PCTs) who provide services in such center and services that PCTs are authorized to perform. The operator of a chronic renal dialysis center shall maintain documentation that demonstrates that PCTs in its center have, within 18 months post hire, and maintain certification by a CMS approved national commercial dialysis technician certification organization.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

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

### **Legislative Objectives:**

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of New York State by requiring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost, including chronic renal dialysis services.

### **Needs and Benefits:**

Part 757 of Title 10 of the New York Codes Rules and Regulations (NYCRR) outlines the chronic renal dialysis requirements for services provided in New York State chronic renal dialysis centers. This regulation currently specifies that these centers must comply with the regulations contained in Title 42 of the Code for Federal Regulations (CFR), Public Health, Part 405, Subpart U – Conditions for Coverage of Suppliers of End State Renal Disease (ESRD) Service, (42 CFR Part 405), 1988 edition. In 2008, 42 CFR Part 405 was amended and renumbered as Part 494.

The amendments to 42 CFR Part 494 [formerly Part 405] establish new conditions for coverage that chronic renal dialysis centers must meet to be approved by the Centers for Medicare and Medicaid Services. It establishes performance expectations for centers and encourages patients to participate in their plan of care and treatment. It also reflects advances in dialysis technology and standard care practices.

10 NYCRR Part 757 must be updated to be in compliance with the revised federal Conditions for Coverage for ESRD Facilities. The proposed regulation also requires chronic renal dialysis centers to comply with certain standards that reflect current technology and practice in the field of ESRD care.

The proposed regulations clarify terms specific to dialysis treatment and requirements related thereto. The proposed regulations clarify that the operator of a chronic renal dialysis center that provides pediatric services must obtain pediatric nephrology consultation services with a board certified pediatric nephrologist. The proposed regulations also clarify standards for the frequency and analysis of product water samples, and ensures that the chronic renal dialysis center is adequately staffed by qualified personnel. The proposed regulations clearly define the scopes of practice, and the roles and responsibilities of the chronic renal dialysis staff.

Additionally, the proposed regulations require chronic renal dialysis centers to comply with certain requirements for ESRD care. In particular, for patients receiving dialysis at

the chronic renal dialysis center, time frames for patient assessment and documentation to be completed by an RN would be required no later than 60 minutes of initiation of dialysis for non-catheter patients and no later than 45 minutes of initiation of dialysis for catheter patients. The purpose of this patient assessment is to evaluate the current health status of the patient, the appropriateness of the dialysis prescription and the tolerance of the procedure by the patient. Furthermore provisions were added to require each chronic renal dialysis center to collaborate with its ESRD network, suppliers, utility service providers and the Department for survey and for emergency preparedness, as well as with other chronic renal dialysis centers to ensure that life saving dialysis services are available in the event of an emergency or disaster.

**Costs:**

Operators of chronic renal dialysis centers are already required to meet the requirements set forth in 42 CFR Part 494 Conditions for Coverage for End-Stage Renal Disease (ESRD) Facilities which have been incorporated into the proposed regulation. The standards that chronic renal dialysis centers must adhere to under the proposed regulation reflect current technology and practice in the field of ESRD care. The proposed regulation will not impose any additional costs.

**Local Government Mandates:**

The proposed regulation does not impose any additional mandates on local governments.

**Paperwork:**

There is no additional paperwork required as a result of the proposed regulation.

**Duplication:**

The proposed regulation incorporates by reference amended federal regulations, and codes and standards and clarifies requirements for New York State chronic renal dialysis centers to provide a consistent regulatory and enforcement structure and to better meet expectations of the regulated parties and the public and ensure no conflict between federal and State regulations exist.

**Alternatives:**

There are no viable alternatives. The current regulations in Part 757 are outdated and do not reflect current technology and practice. Federal amendments to 42 CFR Part 494 [formerly Part 405] renders the provisions in Part 757 outdated and obsolete.

**Federal Standards:**

The proposed regulation incorporates by reference and conforms to the federal standards in 42 CFR Part 494, as well as national standards in end stage renal dialysis treatment. In addition, it clarifies certain definitions, water and dialysate quality provisions and personnel provisions specific to New York State standards.



**Compliance Schedule:**

This proposed amendment will become effective upon publication of a Notice of Adoption in the *New York State Register*.

**Contact Person:**

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## **REGULATORY FLEXIBILITY ANALYSIS**

### **Effect of Rule:**

There are 246 ESRD sites in New York State and 120 ESRD operators. There are 8 large operators (100 employees or more) and 113 small operators (1 to 99 employees). Of the 246 ESRD sites, 73 are run by large operators and 173 are run by small operators.

### **Compliance Requirements:**

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. ESRD facilities are already in compliance with these provisions as this measure incorporates by reference amended federal requirements set forth in 42 CFR Part 494. In addition, the proposed regulation clarifies standards for New York State chronic renal dialysis centers, and standards reflecting current technology and practice in the field of ESRD care. For patients receiving dialysis at the chronic renal dialysis center, time frames for patient assessment and documentation to be completed by an RN would be required no later than 60 minutes of initiation of dialysis for non-catheter patients and no later than 45 minutes of initiation of dialysis for catheter patients. The purpose of this patient assessment and documentation requirement is to ensure that an RN evaluates the current health status of the patient, the appropriateness of the dialysis prescription and the tolerance of the procedure by the patient. Furthermore provisions were added to require each chronic

renal dialysis center to collaborate with its ESRD network, suppliers, utility service providers and the Department for survey and for emergency preparedness, as well as with other chronic renal dialysis centers to ensure that life saving dialysis services are available in the event of an emergency or disaster. Such standards must be immediately complied with in order not to jeopardize health and safety. Therefore, a cure period was not determined necessary and included in the rule.

**Professional Services:**

No additional professional standards are required as a result of the proposed regulation. This measure incorporates by reference amended federal regulations and standards reflecting current technology and practice in the field of ESRD care, and clarifies such standards for New York State chronic renal dialysis centers.

**Compliance Costs:**

This measure incorporates by reference amended federal regulations, and standards reflecting current technology and practice in the field of ESRD care, and clarifies requirements for New York State chronic renal dialysis centers.

**Economic and Technological Feasibility:**

This proposal is economically and technologically feasible.

**Minimizing Adverse Impact:**

There is no adverse impact.

**Small Business and Local Government Participation:**

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

"Dear Chief Executive Officer (CEO)" letters were sent to affected parties outlining the components of 42 CFR Part 494 summarizing the general requirements that apply and linking them to the full text of the federal regulation online. The letter also included a Departmental contact for any questions. Chronic renal dialysis centers should already be in compliance with the federal regulations.

## **RURAL AREA FLEXIBILITY ANALYSIS**

No Rural Area Flexibility Analysis is required pursuant to section 202-bb (4) (a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed regulation that it will not impose any adverse impact on rural areas, and does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

## **JOB IMPACT STATEMENT**

No Job Impact Statement is required pursuant to section 201-a (2) (a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed regulation that it will have no impact on jobs and employment opportunities.



**Project # 151162-C**  
**University Hospital SUNY Health Science Center**

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

**County: Onondaga**  
**Acknowledged: April 9, 2015**

**Executive Summary**

**Description**

University Hospital SUNY Health Science Center (University Hospital), a 409-bed, voluntary, Article 28 hospital located at 750 East Adams Street, Syracuse (Onondaga County), requests approval for indefinite life status for its Outpatient Multi-Specialty Ambulatory Surgery Center (ASC), which is located at the hospital's UHCC-Harrison extension clinic site at 550 Harrison Street in Syracuse. Under CON #101123, University Hospital acquired the ASC from Harrison Center Outpatient Surgery, Inc., a freestanding Article 28 diagnostic and treatment center that operated an ASC in the UHCC-Harrison clinic building. The acquisition of Ambulatory Surgery services to the UHCC-Harrison extension clinic site was contingently approved by the Public Health and Health Planning Council on November 19, 2010, with a five year limited life status. All contingencies were satisfied and the ASC opened effective January 14, 2011. Per this application, University Hospital seeks indefinite life status for its hospital-based ASC.

The UHCC-Harrison extension clinic site continues to operate under the initial building lease that was entered into on January 1, 2011, between Harrison Center Associates (lessor) and University Hospital SUNY Health Sciences Center (lessee). The lease has an initial life of five years with a renewal clause for a period of no longer than ten years.

**OPCHSM Recommendation**

Approval of Indefinite Life

**Need Summary**

The new site has helped to reduce delays, inefficiencies, bumped cases, and long turnover times at the main Hospital site. The extension clinic and the main hospital site have both seen steady volume increases in Ambulatory visits as seen in Table 1. The increase in volume can partially be attributed to the hospital being the only Level 1 Trauma Center in central New York.

**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 project costs associated with this application.

Budget:	Revenues	\$5,780,968
	Expenses	<u>\$4,180,850</u>
	Net Income	\$1,600,118

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval of Indefinite Life**

Council Action Date

**August 6, 2015**



## Need Analysis

### Project Description

University Hospital, a 409-bed hospital, is seeking the approval for indefinite life of their outpatient multi-specialty ambulatory surgery center located at 550 Harrison Street Syracuse, NY 13210.

### Analysis

**Table1: SPARCS Ambulatory Visits by facility 2010-2014**

Year	UHCC Harrison	SUNY Health Science Center
2010	0	10,117
2011	432	10,186
2012	422	10,261
2013	390	10,909
2014*	1,551	9,346

\*Data may be incomplete

Surgical patient service volumes at this Outpatient Ambulatory Surgery Center Extension Clinic site show a significant increase from 2013 to 2014, demonstrating patient demand. The facility has shifted appropriate outpatient cases from the main Hospital operating rooms to this surgical extension clinic site, thereby freeing up limited operating room blocks of time for inpatient cases and trauma-related surgical care. Access to immediate operating room facilities is critical as University Hospital in Syracuse serves as the only regional Level 1 Trauma Center in Central New York.

### Conclusion

The additional operating room space in the extension facility has helped alleviate overcrowding issues in the Hospital. Despite the addition of the extension clinic, there has been a steady increase in visits at both sites. The additional space is a needed community resource.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Proposal

University Hospital SUNY Health Science Center, an existing Article 28 hospital, is requesting permission to convert its outpatient multi-specialty ambulatory surgery center (PFI #4466) located at 550 Harrison Street, Syracuse to indefinite life. The hospital-based surgery center's initial CON Application was approved under CON 101123 for a five year limited life on January 14, 2011. There are no anticipated changes in services and staffing is expected to increase by 2.0 FTEs by the third year of operation.

Through the utilization of the ambulatory surgery center, the hospital has been able to shift appropriate outpatient cases from the main hospital operating rooms (ORs) to this surgical extension clinic site, thereby freeing up limited operating room blocks of time for inpatient cases and trauma-related surgical care. Immediate OR access is critical as University Hospital serves as the only regional Level 1 Trauma Center in Central New York.

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that 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/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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.

### 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.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year of operations and for years one and three subsequent to receiving indefinite life status, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:			
Operating	\$4,993,814	\$5,240,856	\$5,780,968
Non-Operating	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Revenues	\$4,993,814	\$5,240,856	\$5,780,968
Expenses:			
Operating	\$3,381,564	\$3,398,798	\$3,615,956
Capital	<u>\$564,894</u>	<u>\$564,894</u>	<u>\$564,894</u>
Total Expenses	\$3,946,458	\$3,963,692	\$4,180,850
Net Income/(Loss)	\$1,047,356	\$1,277,164	\$1,600,118
Utilization (procedure)	2,070	2,173	2,397
Cost per procedure	\$1,906.50	\$1,824.06	\$1,744.20

Utilization by payor source related to the submitted operating budget is as follows:

<u>Payor Source</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	227	238	263
Commercial MC	224	235	259
Medicare FFS	246	258	285
Medicare MC	98	103	113
Medicaid FFS	43	45	50
Medicaid MC	696	731	806
Private Pay/Other	487	512	565
Charity Care	49	51	56
Total	2,070	2,173	2,397

<u>Payor Source %</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	10.97%	10.95%	10.97%
Commercial MC	10.82%	10.81%	10.81%
Medicare FFS	11.88%	11.87%	11.89%
Medicare MC	4.73%	4.74%	4.71%
Medicaid FFS	2.08%	2.07%	2.09%
Medicaid MC	33.62%	33.64%	33.63%
Private Pay/Other	23.53%	23.56%	23.57%
Charity Care	2.37%	2.36%	2.33%
Total	100.00%	100.00%	100.00%

Expense and utilization assumptions are based on the historical experience of the University Hospital SUNY Health Science Center in operating the ASC.

#### Capability and Feasibility

There are no project costs associated with this project.

The submitted budget indicates an excess of revenues over expenses of \$1,277,164 and \$1,600,118 for years one and three, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The budgets are reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements for University Hospital of the State University of New York Upstate Medical University, which shows an average positive working capital of \$41,443,396, an average positive equity position of \$82,448,890 and an average net income of \$9,086,801 for the period 2013-2014.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A 2013-2014 certified financial statements for University Hospital of the State University of New York Upstate Medical University



**Project # 151107-C**  
**New York Presbyterian Hospital - Columbia Presbyterian  
Center**

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

**County: New York**  
**Acknowledged: March 23, 2015**

**Executive Summary**

**Description**

New York and Presbyterian Hospital (NYP Hospital) is a 2,503-bed, voluntary/not-for-profit, Article 28 hospital system consisting of the five campuses: Columbia Presbyterian Center (995 beds), Weill Cornell Medical Center (862 beds), Westchester Division (270 beds), Allen Hospital (196 beds), and Lower Manhattan Hospital (180 beds). The Columbia Presbyterian Center campus, which is located at 3959 Broadway, New York, is currently certified for 58 neonatal care beds distributed as follows: 11 neonatal continuing care beds, 33 neonatal intermediate beds, and 14 neonatal intensive care beds.

NYP Hospital is requesting approval to create a new 17-bed neonatal intensive care unit (NICU) on the 9<sup>th</sup> floor of the North building and convert 19 of the current neonatal intermediate care beds to 19 neonatal intensive care beds. Upon completion of this construction and renovation project, the facility will have a total of 75 neonatal care beds as follows: 11 neonatal continuing care beds (no change), 14 neonatal intermediate beds, and 50 neonatal intensive care beds.

NYP Hospital – Columbia Presbyterian Center is recognized by the Department as a Regional Perinatal Center and their neonatal intensive care unit (NICU) is one of the busiest in the country. The applicant has indicated that the proposed expansion is needed to accommodate an increased demand for high level neonatal care, especially for neonatal cardiac services available in their Cardiac NICU program.

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

**Need Summary**

To overcome location and bed capacity limitations and meet the increased demand for neonatal cardiac surgery, the applicant requests 17 net new NICU beds to create a Cardiac Wing on a vacant unit of the hospital. NYP Hospital's NICU operated above its certified capacity of 58 beds in 2011 – 2013. NYP Hospital has seen continued demand for neonatal cardiac surgical services including the correction of congenital heart defects. An increase in NICU beds will help alleviate the challenge of placing high-risk neonatal patients in the appropriate setting during unanticipated events.

**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 \$11,111,193 will be met via equity from operations.

**Budget:**

Revenues	\$6,043,994
Expenses	<u>7,890,184</u>
Excess of Revenues over Expenses	(\$1,846,803)

The applicant has indicated that they will cover losses from operations.

## 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 design development drawings, complying with requirements of 10 NCYRR Part 710.4, for review and approval by DASNY. [DAS]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning BAEFP prior to start of construction. [AER]
3. Construction must start on or before 09/01/2015 and construction must be completed by 08/01/2016, assuming approval to start construction has been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Council Action Date

**August 6, 2015**

## Need Analysis

### Project Description

New York Presbyterian (NYP Hospital), a 995-bed, voluntary, not for profit hospital located at 622 West 168<sup>th</sup> Street, New York, 10032, in New York County, requests approval to construct a new 17-bed neonatal intensive care unit (NICU) on the 9<sup>th</sup> floor of the North Building on the NYP Hospital - Columbia Presbyterian Center campus located at 3959 Broadway, New York, 10032 in New York County. The purpose of the project is to redistribute NYP Hospital's NICU beds and create a new cardiac wing of the NICU to accommodate an increased demand for neonatal cardiac services.

### Background

As a designated Level IV Regional Perinatal Center, the NYP Hospital - Columbia Presbyterian Center provides comprehensive maternal and neonatal services to the Bronx, Kings, New York, Orange, Queens, Richmond and Rockland counties.

NYP Hospital has the following New York State designations:

- AIDS Center
- Regional Pediatric Trauma Center
- Regional Perinatal Center
- SAFE Center for Excellence
- Stroke Center

The combined number of Neonatal Continuing, Intensive and Intermediate Care beds is currently 58. The NYP Hospital NICU operated over-capacity in 2011 - 2013, with average daily censuses of 63.9, 61.5 and 59.7 patients, respectively during this period. NYP Hospital seeks to redistribute its neonatal beds by converting 19 of its 33 Neonatal Intermediate Care beds to Neonatal Intensive Care beds and adding 17 net new Neonatal Intensive Care beds. This conversion and addition will result in 11 Neonatal Continuing Care beds, 50 Neonatal Intensive Care beds and 14 Neonatal Intermediate Care beds. The new combined number of Neonatal Continuing, Intensive and Intermediate Care beds will be 75.

**Table 1: New York-Presbyterian Hospital - Certified Beds**

Bed Category	Certified Capacity	Requested Action	Certified Capacity Upon Completion
AIDS	14		14
Bone Marrow Transplant	12		12
Chemical Dependence – Detoxification	3		3
Coronary Care	18		18
Intensive Care	99		99
Maternity	58		58
Medical / Surgical	551		551
Neonatal Continuing Care	11		11
Neonatal Intensive Care	14	36	50
Neonatal Intermediate Care	33	-19	14
Pediatric	100		100
Pediatric ICU	41		41
Physical Medicine and Rehabilitation	16		16
Psychiatric	25		25
<b>Total</b>	995	17	1,012

Source: HFIS, May 2015

The applicant projects 1,080 Neonatal Intensive Care discharges and 25,520 patient days in Year One and 1,120 discharges and 24,466 patient days in Year Three after project completion.

## Analysis

As shown in Table 2 below, the total New York County population was 1,537,195 in 2000; by 2010 it had grown by 3.2% to 1,585,873. Projections for 2020 indicate a further increase of 1.6% to 1,611,039. Between 2000 and 2010 the population of women of childbearing age increased by 2.7%, from 434,015 to 445,791, but is projected to decrease by 5% in 2020 to 423,549.

**Table 2: Census and Population Projections for New York County**

	<b>Total Population</b>	<b>Females 10 – 44 years old</b>
2000	1,537,195	434,015
2010	1,585,873	445,791
2020	1,611,039	423,549
% Change 2000 vs. 2020	4.8%	-2.4%

Source: Census Bureau 2000 and 2010; Cornell Program on Applied Demographics 2020 projections.

Table 3 presents data on utilization at NYP Hospital by service type. Over the last five years, the number of high-risk neonate discharges increased, averaging 1,037 patients for the period under review. The average length of stay for high-risk neonates was high at 20.8 days for the five year period. NYP Hospital's NICU operated above its certified capacity of 58 beds in 2011 – 2013. The average daily census for high-risk neonates increased from 55.9 patients in 2010 to 63.9 patients in 2011, an increase of 14.3%. For the 2011 – 2013 period, NICU occupancy levels were 110.2%, 106.1% and 102.9%, respectively. Average occupancy for the five year period under review is 101.9%, which is indicative of significant need for high level neonate care.

**Table 3: New York Presbyterian Hospital Inpatient Utilization by Service Category**

<b>Service</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Discharges					
High-Risk Neonates	969	1,133	1,107	987	988
Healthy Newborns	3,610	3,525	3,706	3,682	3,648
Obstetric	4,993	5,034	5,118	4,996	4,955
Pediatric	5,377	5,298	5,352	5,419	5,819
Average Length of Stay					
High-Risk Neonates	21.1	20.6	20.3	22.1	20.1
Healthy Newborns	2.8	2.7	2.7	2.7	2.8
Obstetric	3.7	3.7	3.8	3.7	3.8
Pediatric	5.9	6.3	5.9	6.1	5.9
Average Daily Census					
High-Risk Neonates	55.9	63.9	61.5	59.7	54.4
Healthy Newborns	27.8	26.1	27.0	27.4	27.9
Obstetric	51.3	50.5	52.9	50.9	51.8
Pediatric	87.0	91.7	86.8	90.0	94.6
Occupancy					
High-Risk Neonates	96.4%	110.2%	106.1%	102.9%	93.8%
Obstetric	88.4%	87.0%	91.2%	87.8%	89.3%
Pediatric	61.7%	65.0%	61.6%	63.8%	67.1%

Source: SPARCS 2010 – 2014.

As a Regional Perinatal Center, NYP Hospital focuses on sub-specialty care and emergency preparedness. NYP Hospital has seen continued demand for neonatal cardiac surgical services including the correction of congenital heart defects. To overcome location and bed capacity limitations and meet the increased demand for neonatal cardiac surgery, the applicant requests 17 net new NICU beds to create a Cardiac Wing on a vacant unit of the hospital. According to SPARCS data, an average of 344 total cardiac procedures were performed on high-risk neonates between 2010 and 2014, with approximately 46% of these patients transferring into the facility from other hospitals in the region.

Between 2010 – 2014, an average of 179 heart procedures per year were performed on neonates at NYP Hospital with a range of 138 procedures in 2013 and 215 procedures in 2011.

NYP Hospital seeks to use five of the new NICU beds in the proposed Cardiac Wing as emergency surge positions to be occupied only during a major disaster or crisis. NYP Hospital is located in a low risk flood plain zone and not in a hurricane evacuation zone, making it likely for upsurges in patient census during an emergency. An increase in NICU beds will help alleviate the challenge of placing high-risk neonatal patients in the appropriate setting during unanticipated events.

### **Conclusion**

The renovation and construction of the NICU to add 17 net new neonatal intensive care beds to the facility will help meet the increasing demand for subspecialty and cardiac neonatal care in the region. As a designated Regional Perinatal Center, expansion of New York Presbyterian Hospital's Level IV NICU will more efficiently allow the facility to provide critical care to neonates and their families throughout the New York City Region and beyond.

Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

New York Presbyterian (NYP Hospital) requests approval create a new 17-bed neonatal intensive care unit (NICU) on the 9th floor of the North Building on the New York Presbyterian – Columbia Presbyterian Center campus. In conjunction with this construction/renovation project, NYP Hospital proposes to convert 19 of its 33 neonatal intermediate beds to neonatal intensive care beds (for a post-project total of 50 NICU beds). Staffing is expected to increase by 57.53 FTEs in year one of the completed project and remain at that level by the third year of operation.

The NYP Hospital NICU is a Regional Perinatal Center and is one of the busiest NICUs in the country, caring for over 1,000 neonates a year. The continued demand for high level neonate care results in high occupancy rates. Approval of this project to expand neonatal intensive care bed capacity will allow for appropriate care and monitoring that will enable the program to meet its demands.

In addition, the renovated space will provide a modern aesthetic environment particularly designed for neonates and their families. The clinical care team will have access to modern technology and communication systems aimed at improving overall workflow, thus enhancing the patient/family experience.

### **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.

### 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.

Recommendation

**From a programmatic perspective, approval is recommended.**



## Financial Analysis

### Total Project Cost and Financing

The total project cost is for \$11,111,193, broken down as follows:

Renovation and Demolition	\$7,140,601
Asbestos Abatement or Removal	65,000
Design Contingency	714,060
Construction Contingency	714,060
Planning Consultant Fees	18,120
Architect/Engineering Fees	454,193
Construction Manager Fees	164,202
Other Fees (Consultant)	516,550
Moveable Equipment	1,261,641
CON Fee	2,000
Additional Processing Fee	<u>60,766</u>
Total Project Cost	\$11,111,193

Project costs are based on a construction start date of September 1, 2015, and an eleven month construction period. The hospital will provide equity from operations to meet the total project cost.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,590,283	\$6,043,994
Expenses:		
Operating	\$7,179,947	\$7,179,947
Capital	<u>710,850</u>	<u>710,850</u>
Total Expenses	\$7,890,797	\$7,890,797
Excess of Revenues over Expenses	<u>(\$5,300,514)</u>	<u>(\$1,846,803)</u>
Utilization (Discharges)	30	70
Cost Per Discharge	\$263,026.57	\$112,725.67

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	33.33%	32.87%
Medicare Fee-For-Service	10.00%	8.57%
Commercial Fee-For-Service	56.67%	57.14%
Other	0%	1.42%

Revenue is based on actual current revenue per case by payor source, multiplied by the projected number of cases for the respective payors. Expense assumptions are based on the applicant's historical direct cost per case experience in operating neonatal beds. Utilization assumptions are based on anticipated incremental volume in view of their current occupancy rate in excess of capacity.

### Capability and Feasibility

Total project cost of \$11,111,193 will be met through cash equity from the overall operations of NYP Hospital.

Working capital requirements are estimated at \$1,315,133, which is equivalent to two months of third year expenses. The applicant will meet the working capital requirement via operations. BFA Attachment A is NYP Hospital's 2013 through 2014 certified financial statements. The hospital generated both positive working capital and net asset positions, and had an average net income of \$360,895,000 for the period 2013 through 2014. The applicant has sufficient funds to meet the total project cost and the working capital requirements for this project.

The submitted budget indicates an excess of revenues over expenses of (\$5,300,514) and (\$1,846,803) during the first and third years, respectively. The first and third year losses will be offset via operations. Revenues are based on current reimbursement methodologies for neonatal intermediate care beds. The submitted budget appears reasonable.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

BFA Attachment A Financial Summary- 2013 and 2014 certified financial statements of New York Presbyterian Hospital.



**Project # 151178-C  
Nicholas H Noyes Memorial Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Livingston  
Acknowledged: April 20, 2015**

**Executive Summary**

**Description**

Nicholas H Noyes Memorial Hospital (Nicholas Noyes), a 67-bed, voluntary not-for-profit, Article 28 hospital located at 111 Clara Barton Street, Dansville (Livingston County), seeks approval to be certified for therapeutic radiology services and to construct a one Linear Accelerator Radiation Oncology Unit. The unit will be located in 6,700 square feet at the basement level of the hospital consisting of 2,200 square feet of renovated space and 4,500 square feet of new space. Nicholas Noyes will enter into a capital lease agreement for equipment to perform the necessary services. There will be no impact on current bed count.

The unit will serve the Southern Tier counties of Livingston, Allegany, Steuben and Wyoming. The applicant indicates that the cancer center will strengthen and expand oncology services available in the Southern Tier, allowing the hospital to address the needs of a region with a high incidence of cancers. The hospital will collaborate with the University of Rochester's Wilmont Cancer Center to provide patients with more convenient access to comprehensive cancer care.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Nicholas H Noyes Hospital is in the Finger Lakes region, which currently has 16 LINAC

machines and has a determined need for just over 17 LINAC machines. Per Department regulation 709.16, there is a need for one LINAC within the Hospital's service area. The Hospital's primary service area consists of Livingston County, with small areas of Steuben and Ontario Counties.

**Program Summary**

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

**Financial Summary**

Project costs of \$7,404,691 will be met with \$2,515,776 in accumulated funds, \$3,500,000 in fundraising, and \$1,388,915 in a capital lease. In the event the full amount of fundraising is not collected, the hospital has provided an affidavit stating it will use its own equity to provide the necessary funds to complete the project.

**Incremental Budget:**

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,115,909	\$3,838,902
Expenses	<u>1,986,777</u>	<u>2,021,810</u>
Net Income	\$1,129,132	\$1,817,092

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Approval of 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 documentation of contributions to be used as a source of financing, acceptable to the Department of Health. (BFA)

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes.
4. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request.
5. Construction must start on or before October 1, 2015 and construction must be completed by December 31, 2016, presuming approval to start construction is been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.
6. Submission of an executed equipment lease, acceptable to the Department of Health. [BFA]

Council Action Date

**August 6, 2015**

# Need Analysis

## Project Description

Nicholas H Noyes Memorial Hospital is a 67 bed acute care hospital located at 111 Clara Barton Street, Dansville NY, 14437 in Livingston County. The Hospital is seeking CON approval to certify Therapeutic Radiology services at its main campus and install one Linear Accelerator (LINAC). Space for an additional machine will be constructed in anticipation of requesting another machine in no less than three years.

## Analysis

Nicholas H Noyes Hospital is in the Finger Lakes region, which currently has 16 LINAC machines and has a determined need for just over 17 LINAC machines. Per Department regulation 709.16, there is a need for one LINAC within the Hospital's service area. The Hospital's primary service area consists of Livingston County, with small areas of Steuben and Ontario Counties. Overall utilization was 30.8% in 2014.

This project would have no impact on the number of beds at the Hospital.

<b>Service</b>	<b>Approved Beds</b>
Intensive Care	8
Maternity	10
Medical/Surgical	49
<b>Total</b>	<b>67</b>

This project would add Therapeutic Radiology to the approved services at Nicholas H Noyes Hospital. The Hospital is currently licensed to provide the following services:

- Ambulatory Surgery - Multi Specialty
- Clinic Part Time Services
- Clinical Laboratory Service
- Coronary Care
- Emergency Department
- Intensive Care
- Maternity
- Medical Services - Primary Care
- Medical Social Services
- Medical/Surgical
- Nuclear Medicine - Diagnostic
- Radiology - Diagnostic
- Renal Dialysis - Acute
- Swing Bed Program
- Therapy - Physical O/P

The need methodology in section 709.16 states that at least ninety-five percent of the total population of the HSA planning region should live within one hour's driving time of a LINAC. The need for MEV machines is further determined by an assumption that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year.

The results of this methodology are provided below.

<b>LINAC Need in Finger Lakes Region</b>	<b>Total Finger Lakes</b>
# of Cancer Cases/Year	7,479
60% will be Candidates for Radiation Therapy	4,487
50% of (2) will be Curative Patients	2,244
50% of (2) will be Palliative Patients	2,244
Course of Treatment for Curative Patients is 35 Treatments	78,578
Course of Treatment for Palliative patients is 15 Treatments	33,668
The Total Number of Treatments [(5)+(6)]	112,246
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	17.27
Existing/Approved Resources (Upon Approval of 151178)	17.00
Remaining Need for MEV Machines	.27

This methodology is summarized on a per-county basis below. The difference in treatments required is due to rounding.

<b>County</b>	<b>Cancer Cases</b>	<b>Therapy Candidates</b>	<b>Treatments Required</b>	<b>MEV Required</b>	<b>Existing MEV</b>
Chemung	614	369	9,216	1	2
Livingston	354	212	5,304	1	0
Monroe	4,252	2,551	63,780	10	12
Ontario	629	378	9,441	1	1
Schuyler	120	72	1,794	0	0
Seneca	225	135	3,369	1	0
Steuben	581	349	8,718	1	1
Wayne	554	332	8,307	1	0
Yates	150	90	2,253	0	0
<b>Finger Lakes Region</b>	<b>7,479</b>	<b>4,487</b>	<b>112,182</b>	<b>17</b>	<b>16</b>

Source: New York Cancer Registry, 2012 data.

The above table demonstrates that there is a need for one LINAC in the Finger Lakes planning region. The Hospital estimates that in the first year of providing this service they would treat 213 patients and in the third year they would treat 263 patients.

The nine-county Finger Lakes region currently has 16 approved and operational LINACS which are distributed among five hospitals and four clinics, as shown in the table below.

<b>Current Resources</b>	<b># Facilities With LINAC Services</b>				<b># LINAC Machines</b>		
	Hospitals	Hospital Clinics	Total		Hospitals	Hospital Clinics	Total
Chemung	1	0	1		2	0	2
Livingston	0	0	0		0	0	0
Monroe	4	2	6		9	3	12
Ontario	0	1	1		0	1	1
Schuyler	0	0	0		0	0	0
Seneca	0	0	0		0	0	0
Steuben	0	1	1		0	1	1
Wayne	0	0	0		0	0	0
Yates	0	0	0		0	0	0
<b>Total Finger Lakes Region</b>	<b>5</b>	<b>4</b>	<b>9</b>		<b>11</b>	<b>5</b>	<b>16</b>

This project should decrease the number of residents of the Finger Lakes region who are more than a one-hour drive from the closest LINAC. Nicholas H Noyes Hospital is 42 minutes driving time from the nearest LINAC facility, which is located in Monroe County.

#### Conclusion

There is need for one LINAC in the Finger Lakes planning region. Locating it at Nicholas H Noyes Hospital would increase access for the underserved Livingston County and may improve access for the underserved Western planning region. Although the hospital is only 42 minutes driving time from the nearest LINAC provider, there is currently no LINAC provider within its primary service area. Geographical coverage of the planning region will be improved upon completion of this project, lowering the risk of decreased service availability. This project would reduce the need for LINACs in the service area from one to zero.

#### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

#### Project Proposal

Nicholas Noyes Hospital, an existing not-for-profit hospital, working with the University of Rochester's Wilmot Cancer Center, requests certification for Therapeutic Radiology and approval to build a Linear Accelerator Radiation Oncology Unit at the hospital's main site located at 111 Clara Barton Street in Dansville (Livingston County).

The applicant asserts that the cancer center would strengthen and expand the oncology services available in the Southern Tier region (including Allegany, Steuben, and Livingston Counties) and addresses the needs of a region with a high incidence of cancers. The center would provide patients more convenient access to comprehensive cancer care, as those who require Radiation Oncology services currently must travel to Rochester, Buffalo or the east side of Corning.

First year staffing will consist of 11.9 FTEs and expand to 12.4 FTEs by the third year of operation.

#### 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.

#### 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.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost

Total project cost for new construction and equipment is estimated at \$7,404,691, broken down as follows:

New Construction	\$3,865,177
Renovation & Demolition	330,058
Site Development	221,947
Temporary Utilities	5,000
Design Contingency	441,718
Construction Contingency	237,362
Fixed Equipment	38,997
Architect/Engineering Fees	237,470
Construction Manager Fees	250,028
Other Fees	214,127
Movable Equipment	1,388,915
Telecommunications	131,400
Application Fee	2,000
Processing Fee	<u>40,492</u>
Total Project Cost	\$7,404,691

Total costs are based on a thirteen month construction period with a start date of October 1, 2015, and a completion date of December 31, 2016.

The applicant's financing plan is as follows:

Cash Equity (Applicant)	\$2,515,776
Fundraising	3,500,000
Capital Lease	<u>1,388,915</u>
Total	\$7,404,691

### Capital Lease

The applicant has submitted a draft capital lease agreement for the one Linear Accelerator equipment, which is summarized below:

Equipment:	2008 Varian 21 EX Linear Accelerator
Lessor:	Key Equipment Finance, Inc.
Lessee:	Nicholas H Noyes Memorial Hospital
Term:	60 months
Equipment Cost:	\$1,388,915
Lease Payments:	60 monthly payments @ \$25,372.70



## Operating Budget

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first and third years, summarized below:

	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
<u>Revenues</u>				
Medicaid Fee-For-Service	\$13,894.17	\$166,730	\$13,732.00	\$205,980
Medicaid Managed Care	\$14,555.81	305,672	\$15,090.80	377,270
Medicare Fee-For-Service	\$16,211.93	940,292	\$15,981.94	1,150,700
Medicare Managed Care	\$14,974.83	613,968	\$15,170.04	758,502
Commercial Fee-For-Service	\$16,194.75	825,932	\$15,943.20	1,020,365
Commercial Manage Care	\$16,209.85	210,728	\$16,219.31	259,509
Private Pay/Other	\$9,745.40	<u>52,587</u>	\$10,241.17	<u>66,576</u>
Total Revenue		\$3,115,909		\$3,838,902
<u>Expenses</u>				
Operating		\$ 1,468,900		\$ 1,545,209
Capital		<u>517,877</u>		<u>476,601</u>
Total		\$ 1,986,777		\$ 2,021,810
Net Income		\$ 1,129,132		\$ 1,817,092
Total Visits		213		263

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	5.6%	5.7%
Medicaid Managed Care	9.9%	9.5%
Medicare Fee-For-Service	27.2%	27.4%
Medicare Managed Care	19.2%	19.0%
Commercial Fee-For-Service	23.9%	24.3%
Commercial Manage Care	6.1%	6.1%
Private	2.3%	2.3%
Charity Care	1.4%	1.5%
Other	4.2%	4.2%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the hospital's 2014 payer mix.
- Utilization assumptions are based on the regional incidence of cancer in Alleghany, Livingston, Steuben, and Wyoming Counties provided by the NYS Cancer Registry 2006-2010.
- Revenues reflect current outpatient reimbursement methodologies for ambulatory payment classification services.
- Breakeven utilization is projected at 136 visits and 139 visits for Year One and Year Three, respectively.
- Expense and utilization assumptions are based on the medical experience of the current operator.

## Capability and Feasibility

Total Project costs of \$7,404,691 will be met with \$2,515,776 in accumulated funds, \$3,500,000 in fundraising, and \$1,388,915 via a capital lease. The applicant has indicated that they have had success in previous fundraising efforts and have entered into an agreement with the University of Rochester to provide consulting services to solicit donations related to this fundraising campaign. In the event that the full amount of fundraising is not collected, the hospital has provided an affidavit stating it will use its own equity to provide the necessary funds to complete the project. Presented as BFA Attachment A is a 2012-2014 financial summary of Nicholas H Noyes Memorial Hospital, which indicates sufficient resources to fund the project.

Working capital requirements are estimated at \$336,960, which is equivalent to two months of third year expenses. The applicant will provide \$336,960 from its operations. As shown in BFA Attachment A, the hospital has sufficient resources to fund working capital.

The submitted incremental budget indicates a surplus of revenues over expenses of \$1,129,132 and \$1,817,092 during the first and third years, respectively. Revenues reflect current outpatient reimbursement methodologies for ambulatory payment classification services. The budget appears reasonable.

As shown in BFA Attachment A, the hospital maintained positive working capital, positive net asset positions, and incurred an excess of revenues over expenses of \$128,064 and \$3,527,702 for 2014 and 2013, respectively. In 2012, the hospital experienced a loss of \$274,722 primarily due to a loss of an orthopedic surgeon that resulted in a decline of 19.6% in inpatient services. Subsequent to 2012, the hospital has done the following to enhance its financial position:

- Recruited an additional Orthopedic Surgeon
- Opened a new emergency room in May 2014 which resulted in a 4% increase in volume; and
- Opened a new Urgent Care – After Hours office in early 2013.

The applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A Financial Summary of Nicholas H Noyes Memorial Hospital 2012-2014



**Project # 151121-C  
East Side Endoscopy**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Construction    **Acknowledged:** March 23, 2015

**Executive Summary**

**Description**

East Side Endoscopy, LLC (East Side), an existing proprietary Article 28 freestanding ambulatory surgery center (ASC) located at 380 Second Avenue, Concourse A, New York, requests approval to add pain management services to their operating certificate. East Side is currently certified as a single-specialty ASC specializing in gastroenterology procedures. Upon approval of this application, the facility will be certified as a dual single-specialty ASC specializing in both gastroenterology and pain management services.

No construction is needed to implement the addition of this new service. The facility currently has four procedure rooms and fourteen pre/post-operative recovery bays. Upon completion of the project, one of the existing procedure rooms will be programmed to provide pain management procedures using local anesthesia only under a Class B designation.

East Side is currently operating under a one-year extension of their initial five-year limited life, which was contingently approved by the Public Health and Health Planning Council under CON # 142061 on December 4, 2014. Accordingly, this one-year extension will expire on February 4, 2016. The Department will require the submission of a new CON for indefinite life prior to the expiration of East Side's limited life status.

**OPCHSM Recommendation**  
Contingent Approval with a continuation of the operating certificate expiration of February 4, 2016.

**Need Summary**

The number of projected visits in pain management services is 1,122 in the Year 1 with ten percent Medicaid and two percent charity care. New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs.

The proposed pain management services are currently being performed in an office setting. With the approval of this project, these services will be provided in a regulated Article 28 facility.

**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 associated with this project is \$262,327 and will be funded as follows: \$26,527 cash equity and a bank loan of \$235,800 at 3.5% interest for 5 years.

**Incremental Budget (pain management only):**

Revenues	\$349,792
Expenses	<u>\$325,471</u>
Net Income/(Loss)	\$24,321

**Enterprise Budget (total operations):**

Revenues	\$13,625,636
Expenses	<u>\$6,017,990</u>
Net Income/(Loss)	\$7,607,646

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval, with a continuation of the operating certificate expiration of February 4, 2016, 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 a signed agreement with an outside independent entity, acceptable to the Department, to provide quarterly reports to the Department. Said reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payor source;
  - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided; and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. [RNR]
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 DBA which accurately reflects the scope of services, acceptable to the Department. [HSP]
6. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Analysis

The service area is New York County. Upon approval, the number of projected visits in pain management is 1,122 in the Year 1 and 1,190 visits in the Year 3, with ten percent Medicaid and two percent charity care. These projections are based on the current practices of the participating surgeons. Projected utilization for Year 1 and Year 3 is as follows:

Visits by Payor Source	Year 1	Year 1	Year 3	Year 3
Medicare	196	17.5%	208	17.5%
Medicaid	120	10.7%	127	10.7%
Commercial	661	58.8%	700	58.8%
Charity Care	22	2.0%	24	2.0%
Private Pay	3	0.3%	4	.03%
Other	120	10.7%	127	10.7%
<b>Total</b>	<b>1,122</b>	<b>100.0%</b>	<b>1,190</b>	<b>100.0%</b>

New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs. The table below shows the number of patients utilizing ambulatory surgery centers in New York County for 2012 and 2013. (Source: SPARCS)

ASC Type	Facility Name	Patients 2012	Patients 2013
Gastroenterology	Carnegie Hill Endo, LLC	7,357	10,695
Multi	Center for Specialty Care Inc.	4,583	4,174
Gastroenterology	East Side Endoscopy	8,811	9,183
Multi	Fifth Avenue Surgery Center	2,051	1,665
Multi	Gramercy Park Digestive Disease Center	8,577	8,666
Multi	Gramercy Surgery Center, Inc.	2,136	2,550
Gastroenterology	Kips Bay Endoscopy Center, LLC	9,401	9,241
Gastroenterology	Manhattan Endoscopy Center, LLC	9,857	12,014
Multi	Manhattan Surgery Center-opened 4/1/13	N/A	900
Ophthalmology	Mid- Manhattan Surgi-Center	3,888	4,312
Multi	Midtown Surgery Center	2,860	3,114
Ophthalmology	Retinal Ambulatory Surgery Center of New York Inc.	1,718	1,862
Multi	SurgiCare of Manhattan, LLC	3,993	3,648
Gastroenterology	West Side GI	3,652	12,516
Gastroenterology	Yorkville Endoscopy Center- opened 2/22/13	N/A	9,140
<b>Total</b>		<b>68,884</b>	<b>94,536</b>

For New York County, the total number of patient visits for ASC's was 68,884 in 2012 and 94,536 in 2013. This represents a 37% increase in the number of patients served by Ambulatory Surgery Centers in New York County from 2012 to 2013.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

The proposed pain management services are currently being performed in an office setting. With approval of this project, these services will be provided in a regulated Article 28 facility. Approval of this project will enhance access to pain management procedures for the residents of New York County.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Project Proposal

East Side Endoscopy, LLC, an existing single specialty Article 28 freestanding ambulatory surgery center (ASC) specializing in gastroenterology and located at 380 Second Avenue, Concourse A, New York (New York County), seeks approval to add Pain Management services, thus becoming a dual single-specialty ASC.

To implement the pain management service, the Center will bring on board Reginald Rousseau, M.D, a pain medicine physician. Currently, the Center is not seeking to add Dr. Rousseau as an owner but he has committed to perform over 1,000 pain management procedures at the Center in the first year of project implementation.

There will be no construction needed to implement this service addition project. The Center has four (4) endoscopy procedure rooms and a pre/post-operative recovery area with 14 bays. Upon approval and completion of the project, one of the existing procedure rooms shall be programmed to provide pain management procedures utilizing local anesthesia only under a Class B designation and the facility will change its name to East Side Endoscopy and Pain Management Center.

### 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 the routine Article 28 surveys as well as investigations of reported incidents and complaints.

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

The total project costs for the purchase of movable equipment and other fees is \$262,327, broken down as follows:

Other Fees	\$30,500
Movable Equipment	\$228,403
Application Fees	\$2,000
Additional Processing Fees	<u>\$1,424</u>
Total Project Cost	\$262,327

The applicant's financing plan appears as follows:

Cash Equity	\$26,527
Bank Loan (5 years, 3.5% interest)	<u>\$235,800</u>
Total	\$262,327

A bank letter of interest from CapStar Bank for financing at the above stated terms has been provided.

## Operating Budget

The applicant has submitted their 2014 (current year) operating budget for gastroenterology services, and the proposed incremental Year 1 and Year 3 operating budgets for the new pain management service (2015 dollars), as shown below:

	<u>Current Year (2014)</u>	<u>Year One Incremental</u>	<u>Year One Total</u>	<u>Year Three Incremental</u>	<u>Year Three Total</u>
<b>Revenues:</b>					
Operating	\$10,854,284	\$329,712	\$11,183,996	\$349,792	\$11,204,076
Other Operating Revenue*	<u>\$2,421,560</u>		<u>\$2,421,560</u>		<u>\$2,421,560</u>
<b>Total Revenues</b>	<b>\$13,275,844</b>	<b>\$329,712</b>	<b>\$13,605,556</b>	<b>\$349,792</b>	<b>\$13,625,636</b>
<b>Expenses:</b>					
Operating	\$4,632,053	\$275,962	\$4,908,015	\$281,674	\$4,913,727
Capital	<u>\$1,060,466</u>	<u>\$46,977</u>	<u>\$1,107,443</u>	<u>\$43,797</u>	<u>\$1,104,263</u>
<b>Total Expenses</b>	<b>\$5,692,519</b>	<b>\$322,939</b>	<b>\$6,015,458</b>	<b>\$325,471</b>	<b>\$6,017,990</b>
<b>Net Income/(Loss)</b>	<b><u>\$7,583,325</u></b>	<b><u>\$6,773</u></b>	<b><u>\$7,590,098</u></b>	<b><u>\$24,321</u></b>	<b><u>\$7,607,646</u></b>
Utilization (procedures)	10,972	1,122	12,094	1,190	12,162
Cost per procedure	\$518.82	\$287.82	\$497.39	\$273.51	\$494.82

\*Other Operating Revenue includes Net Anesthesia Income of \$2,419,273 and other non-operating income of \$2,287.

Year 2014 was used as the current year for this application as it most accurately reflects the actual operations of the ASC prior to adding pain management services.

Utilization (procedures) by payor source related to the submitted operating budget is as follows:

<u>Payor Source:</u>	<u>Current Year</u>	<u>Year One Incremental</u>	<u>Year One Total</u>	<u>Year Three Incremental</u>	<u>Year Three Total</u>
Medicare Fee-For-Service	1,701	112	1,813	119	1,820
Medicare Managed Care	1,062	84	1,146	89	1,151
Medicaid Fee-For-Service	12	1	13	1	13
Medicaid Managed Care	1,148	119	1,267	126	1,274
Commercial Fee-For-Service	3,495	339	3,834	358	3,853
Commercial Managed Care	3,159	322	3,481	342	3,501
Private Pay/Other	96	123	219	131	227
Charity Care	<u>299</u>	<u>22</u>	<u>321</u>	<u>24</u>	<u>323</u>
<b>Total</b>	<b>10,972</b>	<b>1,122</b>	<b>12,094</b>	<b>1,190</b>	<b>12,162</b>

<u>Payor Source:</u>	<u>% Current</u>	<u>% Year One</u>	<u>% Year Three</u>
Medicare Fee-For-Service	15.50%	14.99%	14.96%
Medicare Managed Care	9.68%	9.48%	9.46%
Medicaid Fee-For-Service	.11%	.11%	.11%
Medicaid Managed Care	10.46%	10.48%	10.47%
Commercial Fee-For-Service	31.85%	31.70%	31.68%
Commercial Managed Care	28.79%	28.78%	28.79%
Private Pay/Other	.88%	1.81%	1.87%
Charity Care	<u>2.73%</u>	<u>2.65%</u>	<u>2.66%</u>
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Revenue, expense and utilization assumptions are based on the current experience of the ASC and the anticipated increases related to adding pain management services.

It is noted that East Side was granted a one-year extension of their initial five-year limited life to provide the ASC with additional time to demonstrate improvement in their efforts to provide charity care. This extension expires February 4, 2016. This current project to add pain management services will be initially operating under the limited life extension until such time as the applicant applies for and receives indefinite life.

#### Capability and Feasibility

The total project cost of \$262,327 will be provided from the facility's existing cash equity in the amount of \$26,527, with the remainder of the project funding coming from a bank loan for \$235,800 at the above stated terms. A bank letter of interest has been provided for the financing.

Working capital requirements are estimated at \$54,245 based on two months of year three incremental expenses. The working capital requirement will be covered through cash equity from the applicant's current operations. BFA Attachment A is the 2012-2014 certified financial statements for East Side Endoscopy, LLC. As shown, the applicant has adequate resources to cover both the equity portion of the total project cost and the working capital equity requirement associated with this project.

The submitted incremental budget indicates an excess of revenues over expenses of \$6,773 and \$24,321 for Years 1 and 3, respectively. The enterprise budget for the total operations of the facility indicates an excess of revenues over expenses of \$7,590,098 and \$7,607,646 for Years 1 and 3, respectively. Revenues are based on current reimbursement methodologies for ASC services. The budgets are reasonable.

Review of the 2012-2014 certified financial statements for East Side Endoscopy, LLC (BFA Attachment A) shows that the ASC had an average negative working capital position of \$244,412, an average negative equity position of \$222,795, and an average positive net income of \$7,485,920 for the period. The negative working capital and equity positions shown for 2012 and 2013 were due to a \$4.3 million membership redemption. The redemption happened in March 2012 when two of the members of East Side redeemed all of their membership interest in the Center. Each member owned 5.72368% interest in the Center for a total of 11.44736% membership interest redeemed. East Side purchased the redeeming members' interest for a total of \$4.3 million dollars, with each redeeming member receiving \$2.15 million. To cover the redemption, East Side incurred the following two liabilities:

- \$1.3 million loan from a financial lender scheduled to terminate in May 2016,
- \$3.2 million payment plan to the two members which includes a 4% interest rate, paid quarterly with the final payment made on April 18, 2015.

The applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**



## Supplemental Information

### Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** NYU Langone Medical Center -- **No Response**  
550 First Avenue  
New York, NY 10016

**Facility:** Bellevue Hospital Center -- **No Response**  
First Avenue at 27<sup>th</sup> Street  
New York, NY 10016

**Facility:** Beth Israel Medical Center -- **No Response**  
Petrie Division  
New York, NY 10003

**Facility:** New York Presbyterian Hospital -- **No Response**  
New York Weill Cornell Center  
525 East 68<sup>th</sup> Street  
New York, NY 10032

### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that all of the procedures being added to the ASC will come from the private practice of the single pain management physician being added to the facility. The applicant also states that a continued growth in demand for ambulatory surgery in New York County and elsewhere as an ongoing source of cases, as will the growing preference by consumers and third-party payers to utilize the services of freestanding ASCs. The applicant further points out that the ASC's current outreach program and affiliation with six FQHC's will help the facility deliver pain management services to a significant number of charity care patients, as is the case with the facility's current endoscopy services.

**Staff Recruitment and Retention:** The applicant states that, to the greatest extent possible, the ASC will utilize existing staff members to implement this service addition project. However, as indicated in the operating budget for this project, the applicant believes that an additional 2.00 FTE staff members (1.00 FTE technician and 1.00 FTE registered nurse) will be needed to implement the pain management service. Recruitment for these staff members will come through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs.

**Office-Based Cases:** The applicant states that the pain management procedures that will be provided through this project are either currently provided in an office-based setting or are not currently being provided to patients (i.e., the patients are un-served). The applicant states that the ASC's active charitable care program will help bring the latter group to the facility for services.

DOH Comment

In the absence of comments from hospitals in the area of the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

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## Attachments

BFA Attachment A East Side Endoscopy, LLC 2012-2014 certified financial statements



**Project # 132131-B  
SMC Manhattan Center**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment and Construction    **Acknowledged:** September 18, 2013

**Executive Summary**

**Description**

SMC Manhattan Center, Inc. (SMC Manhattan), a newly formed New York State not-for-profit corporation, requests approval to establish and construct a diagnostic and treatment center (DTC) to provide primary care. SMC Manhattan is a subsidiary of St. Mary's Center, Inc. (St. Mary's). St. Mary's, a New York State provider of health care, residential, and supportive services to individuals living with HIV/AIDS, is seeking to expand primary care service delivery to its clients and make the services available to the community at large. St. Mary's currently operates a 40-bed AIDS specialty Skilled Nursing Facility (SNF) and an AIDS Adult Day Health Care program (ADHC) located at 512 W. 126<sup>th</sup> Street, Harlem, New York. The D&TC will be co-located with the ADHC program in separate and distinct leased space at the 512 W. 126<sup>th</sup> Street, Harlem site. Co-location will ensure that persons with HIV/AIDS receive coordinated care and experience easy access to all needed services. SMC Manhattan will focus on providing services to individuals and families with incomes below 200% of the federal poverty level.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The proposed site is in the neighborhoods of Central Harlem and Morningside Heights, and Manhattan Community Districts 9 and 10. The number of projected visits is 1,728 (Primary Care: 1,382 or 80 percent and Psychology: 346) in year 1.

**Program Summary**

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

**Financial Summary**

The total project cost of \$558,802 will be met via cash of \$57,055 cash from the parent organization through a subvention agreement, and a loan from PCDC of \$501,747 with a five year term at a rate of prime plus 200 points. The prime rate per the Wall Street Journal is 3.25% as of June 10, 2015; hence, the loan rate would be 5.25% based on current market conditions. Project costs are for minor renovations and the purchase of movable equipment. The applicant has applied for CRFP grant funding as an alternative source of capital to finance the project, in whole or in part. In the event that CRFP funds are not available, the original project financing sources noted herein will remain in place.

**Budget:**

Revenues:	\$1,072,435
Expenses:	<u>977,087</u>
Net Income/(Loss)	<u>\$95,348</u>

Subject to the noted contingencies and condition, the applicant has demonstrated the capability to proceed in a financially feasible manner.

## 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 building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed subvention loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed Primary Care Development Corporation (PCDC) loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Certificate of Amendment of the Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an executed Lease Agreement that is acceptable to the Department. [CSL]
8. Clarification of the relationship between St. Mary's and SMC Manhattan Center, Inc. that is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. This project is contingently approved to be initially funded with a subvention loan of \$57,055 from St. Mary's Center, Inc. and a Primary Care Development Corporation (PCDC) loan of \$501,747. The applicant has applied for Delivery System Reform Incentive Payment Program (DSRIP) Capital Restructuring Financing Program (CRFP) grant funding for this project. In the event that CRFP funding is granted as a source of capital to finance any portion of this project, the amount of CRFP funding will be used as an alternative source for that portion of the project budget. In the event that CRFP funds are not available, the original project financing sources will remain in place. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. 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]
8. Construction must start on or before October 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

9. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]

Council Action Date  
**August 6, 2015**

## Need Analysis

### Analysis

The proposed clinic will be co-located with St. Mary's AIDS Adult Day Health Care Program. A special focus will be on residents of nearby public housing. The service area includes zip codes 10025, 10026, 10027, 10030, 10031, 10032, 10035, 10037, and 10039. The target population is individuals and families living with HIV/AIDS.

The number of projected visits is 1,728 (Primary Care: 1,382 or 80 percent, and Psychology: 346) in Year 1 and 5,184 (Primary Care: 4,147 or 80 percent, Psychology: 1,037) in Year 3.

The proposed D&TC is located in Health Professional Shortage Areas (HPSA) as follows:

HPSA for Primary Care Services: Medicaid Eligible – West Central Harlem

HPSA for Mental Health Services: Medicaid Eligible – Upper Manhattan

HPSA for Dental Health Services: Medicaid Eligible – Central/West Harlem

It is also located in a Medically Underserved Area/Population- West Central Harlem Service Area.

In 2011, in Manhattan and in New York State, the numbers and rates for the Living HIV and AIDS Cases combined are as follows (Source-NYSDOH):

Living HIV and AIDS Cases Combined, 2011 # and Rate/100,000 Population	# HIV and AIDS Cases	Rate: HIV and AIDS Cases
Manhattan	34,071	2,055.1
NY State	130,931	640.8

### Prevention Quality Indicators – PQIs

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.

Table below provides information on the PQI rates for major condition categories. It shows that these rates are higher for 'All Acute,' 'All Circulatory,' 'All Diabetes,' 'All Respiratory,' and 'All PQIs' for all zip codes combined in the proposed service area than those for the State.

PQI Rates-Hospital Admissions per 100,000 Adult, Source: NYSDOH-PQI

PQI Rates	Proposed Service Area	NYS
All Acute	668	526
All Circulatory	766	456
All Diabetes	463	224
All Respiratory	616	357
All Above	2518	1,563

The applicant is committed to serving all individuals needing care regardless of their ability to pay or the source of payment.

### Conclusion

The proposed clinic will improve access to primary care for the communities of New York County, especially PLWHIV/AIDS. With the co-location of the proposed project and the St. Mary's ADHC program, PLWHIV/AIDS will have coordinated care and easy access to all needed services.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

The proposed clinic aims to assure coordination of care and easy access to all needed services by being co-located with the St. Mary's ADHC (in separate space). Limited renovations will be made to existing space to improve patient flow and make the clinic more inviting to clients.

<b>Proposed Operator</b>	SMC Manhattan Center, Inc.
<b>Site Address</b>	512 West 126 <sup>th</sup> Street, Harlem
<b>Hours of Operation</b>	Monday through Friday from 9 am to 5 pm (with additional evening and weekend hours added, as necessary)
<b>Services</b>	Primary Care, including Family Planning, Nutrition, and Psychology
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	2.9 FTEs / 5.4 FTEs
<b>Medical Director(s)</b>	Dr. Harrison Mitchell
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by St. Luke's Hospital 1 mile/3 minutes away
<b>On-call service</b>	A Medical Answering Service will be contracted to handle calls during off-hours and will contact the clinical person on call via pager or cell phone.

### Character and Competence

SMC Manhattan Center is a not-for-profit corporation. The members of the Board (with their respective positions) are listed below.

<b><u>Name</u></b>	<b><u>Title</u></b>
Diane Pollard	President
George Brandt, Jr.	Vice President
Martin Witt	Treasurer/Secretary
Nell B. Gibson	Member
George Goodwill	Member
Pearl Harris	Member
Manley Khaleel	Member
Theresa Mack, MD	Member

Several of the proposed board members have served on the board of St. Mary's Center (the parent corporation of SMC Manhattan Center) for over a decade and have extensive experience in overseeing the operation of health care services related to skilled nursing, primary care and adult day health care for adults with HIV/AIDS for members of the underserved community of Harlem.

Ms. Pollard has served on the St. Mary's Center Board of Directors for 18 years and has expertise in finance through a long career at TIAA-CREF where she was responsible for providing individual financial consulting services. Mr. Brandt has served on the St. Mary's Center Board of Directors for 15 years. He is a retired Rector (Senior Pastor) who holds Master's degrees in both law and divinity. Mr. Witt has a Master's of Business Administration (MBA) and, prior to his retirement, was employed in a number of financial institutions and has served for five years as Treasurer on the St. Mary's Center Board of Directors. Ms. Gibson has also served on the St. Mary's Center Board of Directors for 10 years. She has worked for the Episcopal Urban Caucus and the National Council of Churches and has experience in human resources. Mr. Goodwill has served on the St. Mary's Board of directors for 18 years, most currently in the role of Vice President. Now retired, he was previously an administrator for the New York City Health and Hospitals Corporation. Ms. Harris has served on the St. Mary's Center Board of Directors for 18 years. Also retired, she has nearly 40 years of experience in the field of education and, as a

community resident, provides the Board with information on the need for services and how programs are impacting the community. Mr. Khaleel, now retired, is a former Division Director at the U.S. Department of Health and Human Services with over 33 years of experience in funding and administering community health care programs. Dr. Mack received her medical degree in 1984 and subsequently obtained a Masters in Public Health in 2006. She is a currently practicing primary care physician and the Associate Director of St. Luke's-Roosevelt Hospital Center for Comprehensive Care.

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

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovation and demolition and the purchase of movable equipment is \$558,802 broken down as follows:

Renovation and Demolition	\$287,529
Design Contingency	28,753
Construction Contingency	28,753
Planning Consultant Fees	20,000
Architect/Engineering Fees	28,753
Other	10,000
Movable Equipment	149,968
Application Fee	2,000
Additional Processing Fee	3,046
<b>Total Project Cost</b>	<b>\$558,802</b>

The construction start date is anticipated to be October 1, 2015, with an eight month construction period.

Financing for this project will be as follows:

Subvention Agreement - Cash	\$57,055
PCDC loan (five year term at 5.25% interest rate)	<u>\$501,747</u>
<b>Total*</b>	<b>\$558,802</b>

A letter of interest has been provided by PCDC attesting to the loan terms noted above.

\*The applicant has applied for CRFP grant funding for this project. In the event that CRFP funding is granted as a source of capital to finance any portion of this project, that amount of funding will be used as an alternative source of funds for that portion of the total project cost.



### Subvention Agreement

The applicant has entered into a draft subvention agreement for the project costs and working capital as needed for an amount not to exceed \$500,000. The terms are as follows:

Date:	To be determined
Subvention Grantors:	St. Mary's Center, Inc.
Subvention Grantee:	SMC Manhattan Center, Inc.
Subvention Amount:	Not to exceed \$500,000
Interest Charged:	N/A

The subvention agreement has no interest charge associated with it and amounts redeemed will only be paid back to the Grantors when the financial condition of SMC Manhattan permits such payments to be made without impairment to SMC Manhattan's operations or injury to its creditors.

### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

Premises:	3,997 sq. ft. located at 512 West 126 <sup>th</sup> Street, New York, NY
Lessor:	St. Mary's Inc.
Lessee:	SMC Manhattan Center, Inc.
Rental:	\$66,495 annually (\$16.62 per Sq.) for year 1 with a 4% annual increase thereafter.
Term:	5 years with (3) 5 year renewal options
Provisions:	Included in the base rent are: Security services, hot/cold water and maintenance.

The applicant has submitted an affidavit indicating that the lease agreement will be non-arm's length. The applicant has also submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$315,723	\$1,072,435
Expenses:		
Operating	\$368,635	\$715,509
Capital	<u>256,152</u>	<u>261,578</u>
Total Expenses	\$624,787	\$977,087
Net Income/(Loss)	<u>(\$309,064)</u>	<u>\$95,348</u>
Utilization (Visits)	1,728	5,183
Cost Per Visit	\$361.57	\$188.52

Utilization by payor source for Years 1 and 3 is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicare Fee-for Service	4.98%	9.99%
Medicaid Fee-for-Service	10.01%	9.99%
Medicaid Managed Care	70.02%	60.01%
Commercial Managed Care	0%	5.00%
Charity Care	<u>14.99%</u>	<u>15.01%</u>
Total	100.00%	100.00%

Expense and utilization assumptions are based on the historical experience of St. Mary's Center, Inc., which is the parent of SMC Manhattan Center, Inc.

#### Capability and Feasibility

The applicant has applied for CRFP grant funding. Should any grant monies be awarded as a source of capital funding for this project, the original funding will be reduced in direct proportion. In the event that CRFP funds are not available, the original project financing sources will remain in place as shown above.

The total project cost of \$558,802 will be satisfied through cash equity of \$57,055 from the parent via a subvention agreement, with the balance of \$501,747 provided through a loan from PCDC at the above stated terms. A letter of interest has been submitted for the PCDC loan.

Working capital requirements are estimated at \$162,848 based on two months of year three expenses. The working capital requirement will be covered by the subvention agreement from St. Mary's listed above.

BFA Attachment A is a summary of St. Mary's certified financial statements for the period 2012 through 2014. The certified financial statements show that St. Mary's Center, Inc. had both positive working capital and net asset positions, and had an average net income of \$316,664 for the period 2012 through 2014. The financial statements indicate that St. Mary's has sufficient funds to provide equity and working capital, as authorized per the draft subvention agreement, and to offset any of SMC Manhattan's year one losses.

BFA Attachment B is the pro-forma balance sheet of SMC Manhattan, which indicates a breakeven equity position as of the first day of operations.

The submitted budget projects a net income of (\$309,064) and \$95,348 during years one and three of operation, respectively. Revenues are based on current reimbursement methodologies for DTC services. St. Mary's Center, Inc. has committed to offset any losses in Year 1 for SMC Manhattan during its initial start-up phase.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	St. Mary's Center, Inc. certified financial statements for 2012 through 2014.
BFA Attachment B	SMC Manhattan Center, Inc. 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 6<sup>th</sup> day of August, 2015 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 located at 512 West 126<sup>th</sup> Street in Harlem to provide primary care services primarily to individuals and families living with HIV/AIDS, 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:

132131 B

FACILITY/APPLICANT:

SMC Manhattan Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed subvention loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed Primary Care Development Corporation (PCDC) loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Certificate of Amendment of the Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an executed Lease Agreement that is acceptable to the Department. [CSL]
8. Clarification of the relationship between St. Mary's and SMC Manhattan Center, Inc. that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. This project is contingently approved to be initially funded with a subvention loan of \$57,055 from St. Mary's Center, Inc. and a Primary Care Development Corporation (PCDC) loan of \$501,747. The applicant has applied for Delivery System Reform Incentive Payment Program (DSRIP) Capital Restructuring Financing Program (CRFP) grant funding for this project. In the event that CRFP funding is granted as a source of capital to finance any portion of this project, the amount of CRFP funding will be used as an alternative source for that portion of the project budget. In the event that CRFP funds are not available, the original project financing sources will remain in place. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. 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]

8. Construction must start on or before October 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
9. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]

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 # 142069-B**  
**Bethany Village Primary Care Network, Inc.**

**Program:** Diagnostic and Treatment Center    **County:** Chemung  
**Purpose:** Establishment and Construction    **Acknowledged:** August 21, 2014

**Executive Summary**

**Description**

Bethany Village Primary Care Network, Inc. (Bethany Village), a to-be-formed not-for-profit entity, seeks to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 2977 Westinghouse Road, Horseheads (Chemung County). Bethany Village is proposing to provide the following services: Medical Services – Primary Care (including Urgent Care) and Medical Services – Specialties (including cardiology, neurology, and rheumatology). The facility will be affiliated with the Bethany Nursing Home and Health Related Facility, Inc., an Article 28 residential health care facility (RHCF) located at 3005 Watkins Road in Horseheads, and will enter into an administrative services agreement with the RHCF for the provision of billing and collections, purchasing and software support services.

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

**Need Summary**

The number of projected visits is 6,912 in Year 1 and 15,369 in Year 3.

**Program Summary**

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

**Financial Summary**

Total project cost of \$82,045 will be provided via equity from Bethany Nursing Home and Health Related Facility.

Budget:	Revenues	\$1,832,325
	Expenses	<u>1,678,954</u>
	Net Income	\$153,371

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Approval of this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consulting Agreement, acceptable to the Department. [HSP]
5. Submission of an executed building lease, acceptable to the Department. [BFA]
6. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
7. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of documentation to address the following: The door swing for the door leading to the common corridor outside the public toilet shall be reversed so that the door swings in the direction of exit travel, in compliance with NFPA 101, 2000 Edition 7.2.1.4.3. [AER]
9. Submission of a photocopy of the executed Consulting and Administrative Services Agreement between Bethany Nursing Home and Health Related Facility, Inc. and the applicant, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Lease Agreement between Joyce Wasserman and Michal Niezielski, as landlords, and the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. Construction must start on or before October 1, 2015 and construction must be completed by October 31, 2015, presuming approval to start construction has been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**August 6, 2015**

## Need Analysis

### Background and Analysis

The service area consists of the following zip codes: 14805, 14812, 14814, 14816, 14824, 14838, 14845, 14861, 14864, 14865, 14869, 14871, 14872, 14889, 14901, 14903, 14904, and 14905.

### Prevention Quality Indicators-PQIs

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.

Table 1 below provides information on the PQI rates for major condition categories such as acute, circulatory, diabetes, and respiratory for the service area of the proposed project. The table shows that the service area for the proposed center has higher PQI rates for the condition categories of acute and respiratory than those rates for New York State.

**Table 1: PQI Rates**

PQI Rates: Hospital Admissions/ 100,000 Adults	Service Area	New York State
All <sup>1</sup>	1717	1563
All Acute	781	526
All Circulatory	344	456
All Diabetes	205	224
All Respiratory	383	357

Source-DOH PQI

<sup>1</sup> Due to rounding, individual conditions may not sum to total

The number of projected visits is 6,912 in Year 1 and 15,369 in Year 3. Bethany Village is committed to serving all patients in need of care, regardless of their ability to pay or the source of their payment.

Chemung County has five Diagnostic and Treatment Centers, one of which is an ambulatory surgery center. The proposed diagnostic & treatment center will be providing the services of Primary Care, Cardiology, Orthopedics, Neurology, and Rheumatology.

### Conclusion

The proposed Diagnostic and Treatment center will provide some much needed-medical services to the communities of Chemung County and help reduce the high PQI rates in the proposed service area.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Bethany Village Primary Care Network, Inc. (Bethany Village), a not-for-profit entity, seeks to establish and construct a Diagnostic and Treatment Center (D&TC) at 2977 Westinghouse Road in Horseheads (Chemung County). Bethany Village Primary Care Network, Inc. will be affiliated with the Bethany Village Nursing Facility at the same address.

Bethany Village is a not-for-profit community situated on over 100 acres of rolling green fields and woods that offers its residents a full complement of services and levels of care (i.e., assisted living, skilled



nursing, subsidized housing, home care). The campus provides a continuum of care to residents and the addition of the Center is a natural outgrowth of the services provided.

The Center will be located on the first floor of an existing building. Minimal renovations are required to convert the former office space into a medical office facility.

<b>Proposed Operator</b>	Bethany Village Primary Care Network, Inc.
<b>Site Address</b>	2977 Westinghouse Road Horseheads, NY (Chemung County)
<b>Services</b>	Medical Services – Primary Care Medical Services (to include Urgent Care) Medical Services – Other Medical Specialties
<b>Hours of Operation</b>	Monday through Friday from 8:00 am to 6:00 pm (Hours will be added with increased volume/demand)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	9.07 FTEs / 19.93 FTEs
<b>Medical Director(s)</b>	Lorrie Penfield, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Arnot Ogden Medical Center 6.3 miles / 13 minutes away

**Character and Competence**

The proposed Board of Directors of Bethany Village Primary Care Network, Inc. is:

<b><u>Name</u></b>	<b><u>Title</u></b>
J. Carol Lincoln	President
R.C. Ike	Vice President
Rose M. Tolbert	Treasurer
Dalton E. Flatt	Secretary
John E. Benjamin	Member

Ms. Lincoln earned a Bachelor’s Degree in Sociology and worked for Cornell Cooperative Extension for twenty years before her retirement in 2005. Mr. Ike is the owner of Party Time, a retail party supplies company. Ms. Tolbert has dual Bachelor’s Degrees and a Certificate of Advanced Study. She spent over 30 years in the field of education and was certified as both a teacher and administrator/supervisor prior to her retirement in 1994. Mr. Flatt has been retired since 2000. Mr. Benjamin holds a Master’s Degree from Alfred University and has been employed for over 40 years with an urban planning and development corporation for which he currently serves as President. Each of the aforementioned members has extensive experience (ranging from 8 to 17 years) serving on the boards of an Article 28 residential health care facility (Bethany Nursing Home & Health Related Facility, Inc.) and an adult home (Bethany Retirement Home, Inc.).

As none of the board members have documented medical experience or experience operating a diagnostic and treatment center, in keeping with past practice, disclosure information was submitted and reviewed for the medical director.

Dr. Lorrie Penfield is a practicing board-certified Internist who cares for patients in both an office and hospital setting. As part of her daily responsibilities, she is responsible for teaching and mentoring medical residents and students. She has nearly 30 years of experience as a physician and ten years of experience in Emergency Medicine. Dr. Penfield disclosed one settled medical malpractice case.

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**

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

**Recommendation**

**From a programmatic perspective, contingent approval is recommended.**

<h2>Financial Analysis</h2>
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**Lease Rental Agreement**

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

Premises:	1,465 square feet located 2977 Westinghouse Road, Horseheads, New York.
Landlord:	Joyce Wasserman
Tenant:	Bethany Village Primary Care Network, Inc.
Term:	Ten years and five months
Rental:	Year One - \$15,840 annually (\$10.81 per sq. ft.), Year Two - \$17,580 annually (\$12.00 per sq. ft.), Year Three - \$18,312 annually (\$12.50 per sq. ft.), Year Four - \$19,044 annually (\$13.00 per sq. ft.), Year Five - \$19,776 annually (\$13.49 per sq. ft.), and Year 6 and each year thereafter, the rent shall increase by \$65 per month.
Provisions:	The tenant shall be responsible for utilities, maintenance and real estate taxes.

The applicant has submitted an affidavit indicating that the lease arrangement will be an arm's length lease arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

**Administrative Services Agreement**

The applicant has submitted a draft administrative services agreement they will enter into with the RHCF, which is summarized below:

Administrator:	Bethany Nursing Home and Related Facility, Inc.
Center:	Bethany Village Primary Care Network, Inc.
Services Provided:	Billing and collection services; accounting and financial services; quality and utilization controls; complete software support, ordering all supplies, inventory and drugs necessary for Center's operations.
Term:	Three years
Compensation:	The fee will be \$83,474 in Year One, \$133,354 in Year Two and \$183,232 in Year Three.

The Center retains ultimate independent authority and responsibility over the following:

- The hiring or termination of key management employees, the Administrator, the Medical Director, and the members of the medical staff of the Center;
- Control and maintenance of the books and business records of the Center;
- Disposing of assets and incurring liabilities on behalf of Center;
- Adopting and enforcing policies regarding the operation of the Center;

- Approving the operating and capital budgets of the Center.

#### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$82,045, further broken down as follows:

Renovation and Demolition	\$17,500
Design Contingency	1,750
Construction Contingency	1,750
Architect/Engineering Fees	1,400
Other Fees (Consultant)	25,000
Moveable Equipment	27,207
Telecommunications	5,000
CON Fee	2,000
Additional Processing Fee	<u>438</u>
Total Project Cost	\$82,045

Project costs are based on a construction start date of October 1, 2015, and a one month construction period.

The applicant will provide equity via operations of Bethany Nursing Home and Health Related Facility to meet the total project cost.

#### Operating Budget

The applicant has submitted an estimated operating budget, in 2015 dollars, during the first and third years of operation, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$834,745	\$1,832,325
Expenses:		
Operating	\$762,150	\$1,653,700
Capital	<u>25,254</u>	<u>25,254</u>
Total Expenses	\$787,404	\$1,678,954
Net Income	\$47,341	\$153,371
Utilization (Visits)	6,912	15,359
Cost Per Visit	\$113.92	\$109.31

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	2.5%	2.0%
Medicaid Managed Care	7.5%	10.0%
Medicare Fee-For-Service	15.0%	5.0%
Medicare Managed Care	28.0%	37.5%
Commercial Fee-For-Service	5.0%	2.5%
Commercial Managed Care	25.0%	27.5%
Private Pay	15.0%	13.5%
Charity Care	2.0%	2.0%

Revenue assumptions are based on current reimbursement methodologies for D&TC services. Expense and utilization assumptions are based on the experience of other D&TC facilities in the applicant's geographical area. The proposed D&TC payor mix will not be reflective of the payor source of the affiliated nursing home. The D&TC will be a community-based program and a large percentage of the services to be provided will be to Medicare and Commercial Pay recipients.

### Capability and Feasibility

Project costs of \$82,045 will be met via equity from Bethany Nursing Home and Health Related Facility, Inc. Working capital requirements are estimated at \$279,826, which appears reasonable based on two months of third year expenses. The applicant will provide equity to meet the working capital requirements via operations of Bethany Nursing Home and Health Related Facility, Inc. BFA Attachment A is the financial summary of Bethany Nursing Home and Health Related Facility, Inc., which indicates the availability of sufficient funds for the equity contribution to meet the working capital and the total project cost. BFA Attachment B is the pro forma balance sheet of Bethany Village Primary Care Network, Inc., which indicates a positive net asset position of \$361,871 as of the first day of operation.

The submitted budget indicates a net income of \$47,341 and \$153,371 during the first and third year, respectively. Revenues are based on current reimbursement methodologies for diagnostic and treatment services. The submitted budget appears reasonable.

As shown on BFA Attachment A, Bethany Nursing Home and Health Related Facility, Inc. had an average positive working capital position and an average positive net asset position from 2011 through 2014. Also, the entity incurred average income of \$1,836 from 2011 through 2014. The applicant has indicated that the reason for the 2011 and 2012 losses was the result of the following:

- In 2011 the nursing facility experienced a higher than expected Medicaid census along with a significant negative rate adjustment for years 2010 and 2011 that was recognized in 2011.
- The nursing facility's monthly Medicare Part A census was relatively low, as was the overall RUG score distribution, and in 2012 the nursing facility incurred approximately \$117,209 in one time charges.

The applicant indicated that operations improved in 2013 due to increased occupancy.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary- Bethany Nursing Home and Health Related Facility, Inc.
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 6<sup>th</sup> day of August, 2015 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 to be located at 2977 Westinghouse Road, Horseheads, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142069 B

Bethany Village Primary Care Network, 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consulting Agreement, acceptable to the Department. [HSP]
5. Submission of an executed building lease, acceptable to the Department. [BFA]
6. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
7. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of documentation to address the following: The door swing for the door leading to the common corridor outside the public toilet shall be reversed so that the door swings in the direction of exit travel, in compliance with NFPA 101, 2000 Edition 7.2.1.4.3. [AER]
9. Submission of a photocopy of the executed Consulting and Administrative Services Agreement between Bethany Nursing Home and Health Related Facility, Inc. and the applicant, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Lease Agreement between Joyce Wasserman and Michal Niezielski, as landlords, and the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. Construction must start on or before October 1, 2015 and construction must be completed by October 31, 2015, presuming approval to start construction has been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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 # 142222-B  
Healthquest Health Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment and Construction    **Acknowledged:** December 2, 2014

**Executive Summary**

**Description**

Healthquest Health Center, LLC, a to-be-formed New York State limited liability company, requests approval for the establishment and construction of an Article 28 diagnostic and treatment center (D&TC) to be located at 3500 Nostrand Avenue, Brooklyn (Kings County). The Center will provide the following D&TC services: Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Magnetic Resonance Imaging (MRI). The applicant will lease an MRI machine.

The proposed members of Healthquest Health Center, LLC are as follows:

Russell Greenseid	40.00%
Nicola Chiappetta	40.00%
Matthew Valvo	10.00%
Salvator Germino	10.00%

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Healthquest Health Center, LLC, proposes to establish and construct an Article 28 diagnostic and treatment center at 3500 Nostrand Avenue, Brooklyn, 11235, Kings County. The facility provide Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Magnetic Resonance Imaging (MRI).

The proposed project will improve access to primary care and imaging services for the communities of Kings County.

**Program Summary**

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

**Financial Summary**

Project costs of \$1,578,144 will be met as follows: Equity of \$157,814 from the proposed members, and a bank loan of \$1,420,330 at an interest rate of 5.0% for a five year term with a twenty-five year amortization. The applicant will refinance the loan when the balloon payment becomes due. Affidavits have been received from Russell Greenseid and Nicola Chiappetta committing to personally fund the balloon payment if acceptable refinancing is not available.

**Budget:**

Revenues	\$5,247,181
Expenses	<u>4,835,019</u>
Net Income	\$412,162



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital [HSP]
3. Submission of a revised Articles of Organization (using a name other than Healthquest Health Center) acceptable to the Department. [HSP]
4. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
5. Submission of an executed loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of a fully executed Certificate of Assumed Name that is acceptable to the Department. [CSL]
9. Submission of a fully executed lease that is acceptable to the Department. [CSL]
10. Submission of a fully executed Articles of Organization that is acceptable to the Department. [CSL]
11. Submission of a fully executed Operating Agreement that is acceptable to the Department. [CSL]
12. Clarification regarding Membership Certificates, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Construction must start on or before 10/01/2015 and construction must be completed by 01/30/2016, assuming approval to start construction has been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**August 6, 2015**

# Need Analysis

## Project Description

Healthquest Health Center, LLC, seeks approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) at 3500 Nostrand Avenue, Brooklyn, 11235, Kings County. Proposed services are: Medical Services - Primary Care, Medical Services – Other Medical Specialties, and Magnetic Resonance Imaging (MRI). The facility will lease one MRI machine.

## Analysis

The service area is Southern Brooklyn which includes zip codes 11235, 11223, 11224, and 11229. The number of projected visits is 12,725 in Year 1 and 24,890 in Year 3. These projections include 1,800 MRI scans in Year 1 and 2,200 scans in Year 3. The percent of primary care visits is 86 percent in Year 1 and 91 percent in Year 3.

There are three freestanding D&TCs in New York City Boroughs - two in Queens and one in Bronx - that provide MRI services. (Source: HFIS).

The proposed location is in a Health Professional Shortage Area (HPSA) as follows:

- HPSA for Primary Care Services for Medicaid Eligible-Coney Island/Gravesend.

## Prevention Quality Indicators-PQIs

PQIs are rates of admission to the hospital for conditions for which good out-patient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. Table below provides information on the PQI rates for PQI Conditions for 'All Circulatory,' 'All Diabetes,' 'All Acute,' 'All Respiratory,' and 'All PQIs' for the service area zip codes 11235, 11223, 11224, and 11229 combined and also for New York State. These rates are higher for 'All Circulatory' and 'All Diabetes' PQI conditions for the four zip codes combined than those for the New York State.

### **PQI Rate-Hospital Admissions per 100,000 Adult, Source: NYSDOH-PQI**

PQI Conditions Rate	Service Area	NYS
All Circulatory	474	456
All Diabetes	233	224
All Acute	438	526
All Respiratory	324	357
All PQIs <sup>1</sup>	1,467	1,563

<sup>1</sup> Due to rounding, individual conditions may not sum to Total.

Relative to Regulation 709.12 Need Methodology for acquisition of Magnetic Resonance Imagers, the applicant has demonstrated the availability of appropriate equipment in the areas of computed tomography, ultrasound, angiography, conventional radiography and nuclear medicine; the applicant has also demonstrated the availability of neurologists, neurosurgeons, orthopedists, oncologists and radiologists who meet the definition of qualified specialists.

The applicant is committed to serving all patients in need of care regardless of their ability to pay or the source of payment.

## Conclusion

The proposed D&TC will improve access to primary care and imaging services for the communities of Kings County.

## Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Healthquest Health Center, LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) at 3500 Nostrand Avenue in Brooklyn (Kings County). The proposed health center's focus will be on the unmet needs of Brooklyn residents, specifically primary medical care, medical social services, psychology, magnetic resonance imaging, physical medicine and rehabilitation and physical therapy.

<b>Proposed Operator</b>	Healthquest Health Center, LLC
<b>Site Address</b>	3500 Nostrand Avenue, Brooklyn (Kings County)
<b>Services</b>	Medical Services - Primary Care Medical Services – Other Medical Specialties Magnetic Resonance Imaging (MRI)
<b>Hours of Operation</b>	Monday through Friday from 8:00 am to 6:00 pm, Additional hours will be added, as needed.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	18.08 FTEs / 30.20 FTEs
<b>Medical Director(s)</b>	Igor Stiler, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by New York Methodist Hospital 6.6 miles/ 24 minutes away

### Character and Competence

The proposed members of Healthquest Health Center, LLC are:

Russell Greenseid, DC	40%
Nicola Chiapetta, DC	40%
Salvator Germino, DC	10%
Matthew J. Valvo, RPA	10%

Messrs. Greensled, Chiapetta and Germino are licensed chiropractors and Mr. Valvo is a Registered Physician's Assistant. All four gentlemen have extensive work history in the management of medical practices, specifically in Southern Brooklyn. As non-physician owners, they have entered into an agreement with Igor Stiler, MD, a board-certified Neurologist who has been in private practice since 1986, to serve as Medical Director.

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

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

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Lease Rental Agreement

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

Premises:	7,000 square feet located at 3500 Nostrand Avenue, Brooklyn, New York
Lessor:	B&P Real Estate, LLC
Lessee:	Healthquest Health Center, LLC
Term:	Ten Years
Rental:	Year One - \$245,000 (\$35.00 per sq. ft.). Rental will increase by 3% per year thereafter.
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant has submitted an affidavit indicating that the lease arrangement will be an arm's length lease arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,578,144, further broken down as follows:

Renovation and Demolition	\$969,000
Design Contingency	96,900
Construction Contingency	96,900
Architect/Engineering Fees	77,520
Other Fees (Consultant)	76,500
Moveable Equipment	188,154
Financing Costs	39,505
Interim Interest Expense	23,044
CON Fee	2,000
Additional Processing Fee	8,621
Total Project Cost	<u>\$1,578,144</u>

Project costs are based on a construction start date of October 1, 2015, and a four month construction period.

The applicant's financing plan appears as follows:

Equity	\$157,814
Bank Loan (5.0% interest, 5 year term, 25 year amortization period)	1,420,330

The applicant intends to refinance the loan when the balloon payment becomes due. The applicant submitted affidavits from Russell Greenseid and Nicola Chiappetta indicating they will provide the necessary funds if acceptable refinancing is not available.

## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third years, respectively, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,444,728	\$5,247,181
Expenses:		
Operating	\$2,530,949	\$4,253,258
Capital	<u>581,761</u>	<u>581,761</u>
Total Expenses	\$3,112,710	\$4,835,019
Net Income	<u>\$332,018</u>	<u>\$412,162</u>
Visits	12,725	24,890
Cost Per Visit	\$244.61	\$194.26

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	3.0%	1.0%
Medicaid Managed Care	12.0%	19.0%
Medicare Fee-For-Service	12.0%	5.0%
Medicare Managed Care	15.0%	17.0%
Commercial Fee-For-Service	40.0%	40.0%
Private Pay	18.0%	18.0%

Revenue assumptions are based on current average per visit payment rates by payors for D&TC and Imaging services. Expense and utilization assumptions are based on the experience of other similar facilities in the geographical area. The applicant's assumptions and budget appear reasonable.

## Capability and Feasibility

Total project cost of \$1,578,144 will be met as follows: Equity of \$157,814 to be derived from the proposed members, and a bank loan of \$1,420,330 at an interest rate of 5.0% for a five year term and a twenty-five year amortization period. The applicant will refinance the loan when the balloon payment becomes due. Affidavits have been provided by proposed members Russell Greenseid and Nicola Chiappetta committing to personally fund the balloon payment if acceptable refinancing is not available.

Working capital requirements are estimated at \$805,836, which is equivalent to two months of third year expenses. The applicant will finance \$402,918 at an interest rate of 5% for a five year term. The remaining \$402,918 will be provided as equity from the proposed members of Healthquest Health Center. BFA Attachment A is the personal net worth statements of the proposed members of Healthquest Health Center, LLC, which indicates the availability of sufficient funds to meet the total project cost and the working capital requirement. BFA Attachment B is the pro forma balance sheet of Healthquest Health Center, LLC as of the first day of operation, which indicates a positive net asset position of \$560,732.

The submitted budget indicates a net income of \$332,018 and \$412,162 during the first and third years, respectively. Revenues are reflective of current reimbursement rates for diagnostic and treatment centers.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

## Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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BFA Attachment A    Personal Net Worth Statement- Proposed Members  
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 6<sup>th</sup> day of August, 2015 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 to be located at 3500 Nostrand Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142222 B

Healthquest Health Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital [HSP]
3. Submission of a revised Articles of Organization (using a name other than Healthquest Health Center) acceptable to the Department. [HSP]
4. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
5. Submission of an executed loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of a fully executed Certificate of Assumed Name that is acceptable to the Department. [CSL]
9. Submission of a fully executed lease that is acceptable to the Department. [CSL]
10. Submission of a fully executed Articles of Organization that is acceptable to the Department. [CSL]
11. Submission of a fully executed Operating Agreement that is acceptable to the Department. [CSL]
12. Clarification regarding Membership Certificates, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Construction must start on or before 10/01/2015 and construction must be completed by 01/30/2016, assuming approval to start construction has been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]



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 # 151014-E**  
**PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation and  
Nursing Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Clinton  
**Acknowledged:** January 13, 2015

**Executive Summary**

**Description**

PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation & Nursing Center, a New York limited liability company, requests approval to be established as the operator of Evergreen Valley Nursing Home, an 89-bed, Article 28 residential health care facility (RHCF) located at 8 Bushey Boulevard, Plattsburgh (Clinton County). The RHCF also operates a 24-slot Adult Day Health Care Program (ADHCP) at the same location. The current operator of the facility is Margaret Hassett, a sole proprietor. Ms. Hassett also owned 100% of the shares of Eight Mickel Street Corporation (EMS), the property owner of the facility. An entity related to the proposed operator, PRNC Realty, LLC, purchased the real property on September 19, 2014.

PRNC Operating, LLC and Margaret Hassett entered into an Operations Transfer Agreement (OTA) on June 1, 2014 (with amendments April 23, 2015), whereby Margaret Hassett will transfer rights to operate the nursing home to PRNC Operating, LLC upon Public Health and Health Planning Council (PHHPC) approval of this application. An Asset Purchase Agreement (APA) was also entered into on June 1, 2014 (with amendments April 23, 2015), with Margaret Hassett, EMS, and PRNC Realty, LLC, whereby PRNC Realty, LLC agreed to purchase the real property from EMS. On September 19, 2014, PRNC Realty, LLC purchased the real property from EMS for \$1,610,000. The purchase price included the assumption of liabilities up to a cap of \$1,610,000. PRNC Realty, LLC is currently leasing the facility to Margaret Hassett.

Upon PHHPC approval of this application, PRNC Operating, LLC will purchase the operations from Margaret Hassett with payment of the assumed payables and liabilities up to a cap of \$1,090,000. As per the APA and the OTA, guaranties have been executed by the buyers with Ephraim Zagelbaum and Lawrence Goldfarb assuring the payments of the assumed liabilities and the assumed payables, and the performance of the terms under these agreements.

There is a non-arm's length arrangement between the realty entity, PRNC Realty, LLC, and the proposed operator, PRNC Operating, LLC in that there is identical ownership, as follows:

<b>PRNC Realty, LLC And PRNC Operating, LLC</b>	
<b>Members</b>	<b>%</b>
Ephraim Zagelbaum	50.0%
Alexander Barth	30.0%
Yehudah J. Walden	20.0%

On June 1, 2014, the current operator of the RHCF hired Mr. Zagelbaum as CEO of operations. A copy of the employment agreement has been provided.

It is noted that the applicant members are also seeking to acquire two other nursing facilities, Auburn Nursing Home under CON # 151085 and Blossom View Nursing Home under CON #151087. These two applications are being reviewed concurrent with this application request.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

Evergreen Valley Nursing Home's occupancy was 98.2% in 2011, 98.1% in 2012, and 97.2% in 2013. Overall occupancy thus far for 2015 is 93.2%. While occupancy has currently fallen below 97%, the facility has continually exceeded the planning optimum and this is expected to resume going forward. This application will not result in a change to beds or services.

#### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

#### Financial Summary

On September 19, 2014, PRNC Realty, LLC acquired the RHC real property from EMS with payment of assumed payables and assumed liabilities up to a cap of \$1,610,000. Upon PHHPC approval, PRNC Operating, LLC will purchase the operations of the skilled nursing facility from the current operator, with payment of assumed payables and assumed liabilities up to a cap of \$1,090,000. As per the APA and the OTA, guaranties have been executed by the buyers with Ephraim Zigelbaum and Lawrence Goldfarb assuring the payments of the assumed liabilities and the assumed payables, and the performance of the terms under these agreements.

PRNC Realty, LLC acquired a loan to fund the payments for the realty and the operations. This purchase was funded with \$700,000 equity and a \$2,000,000 loan. The loan is a Multiple Disbursement Term Loan with a maximum of \$4,000,000 available at 3.9375% on a 20-year term and amortization.

There are no project costs associated with this application.

Budget:	
Revenues	\$6,274,259
Expenses	<u>5,978,629</u>
Gain	\$295,630

## 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. (CSL)
5. Submission of the applicant's executed Operating Agreement, acceptable to the Department. (CSL)

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

# Need Analysis

## Background

PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation & Nursing Center seeks approval to become the established operator of Evergreen Valley Nursing Home, an 89-bed Article 28 residential health care facility (RHCF), located at 8 Bushey Boulevard, Plattsburgh, 12901, in Clinton County.

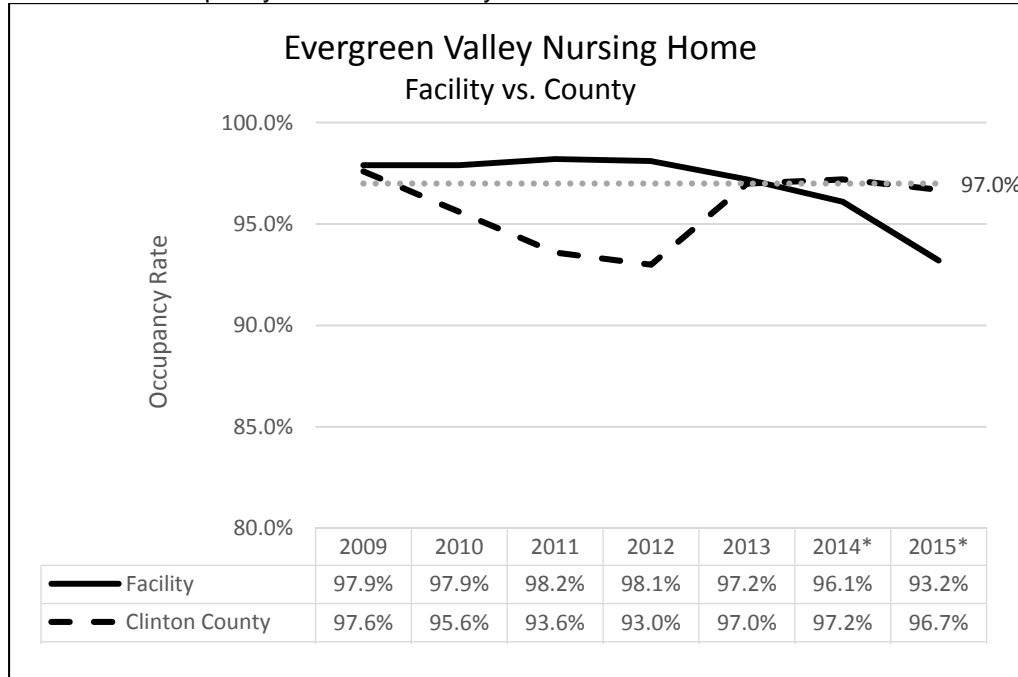
## Analysis

There is currently a need for 106 beds in Clinton County as indicated in Table 1 below.

**Table 1: RHCF Need – Clinton County**

<b>2016 Projected Need</b>	616
<b>Current Beds</b>	423
<b>Beds Under Construction</b>	87
<b>Total Resources</b>	510
<b>Unmet Need</b>	106

The overall occupancy for Clinton County was 97.0% for 2013 as indicated in the following chart:



\*unaudited; based on weekly census

Evergreen Valley Nursing Home's occupancy was 98.2% in 2011, 98.1% in 2012, and 97.2% in 2013. Occupancy has consistently met or exceeded the Department's planning optimum for the last five audited years, at least. This facility also operates an Adult Day Health Care Program, which affords residents and individuals within Clinton County an opportunity to remain close to family and friends while maintaining the quality of care needed.

### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Evergreen Valley Nursing Home's Medicaid admissions for 2012 and 2013 are 93.3% and 85.7%, respectively. This facility exceeded Clinton County 75% rates in 2012 and 2013 of 17.5% and 19.7%, respectively.

### Conclusion

Approval of this application will result in the preservation of a much-needed resource for the Medicaid population in the community.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
<b>Facility Name</b>	Evergreen Valley Nursing Home	Plattsburgh Rehabilitation and Nursing Center
<b>Address</b>	8 Bushey Boulevard Plattsburgh, NY 12901	Same
<b>RHCF Capacity</b>	89	Same
<b>ADHC Program Capacity</b>	24	Same
<b>Type of Operator</b>	Individual	Limited Liability Company
<b>Class of Operator</b>	Proprietary	Proprietary
<b>Operator</b>	Margaret B. Hasset                      100%	PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation and Nursing Center  Members: *Ephraim Zigelbaum      50.0% Alexander Barth            30.0% Yehudah Walden            20.0%  *Managing Member

## Character and Competence - Background

### Facilities Reviewed

#### New York Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

#### Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present

### Individual Background Review

Ephraim Zagelbaum is a licensed New York State nursing home administrator and is considered to be in good standing. Mr. Zagelbaum has been the President/Chief Executive Officer at Personal Healthcare Management LLC since December 2012, a company administering business office functions for health facilities located in Tarrytown, New York. He was previously employed as the Administrator of Record at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Alexander Barth is a licensed New York State nursing home administrator and is considered to be in good standing. He also holds an EMT license, which is considered to be in good standing. Mr. Barth has been a managing partner at Personal Healthcare Management LLC since January 2013, a company administering business office functions for health facilities located in Tarrytown, New York. Previously he was employed as Administrator of Record at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Yehudah Walden has been a managing member at Personal Healthcare Management LLC since 2010, a company administering business office functions for health facilities located in Tarrytown, New York. Mr. Walden discloses the following health facility ownership interests:

Highland Rehabilitation and Nursing Center	02/2013 to present
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Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden were approved by the Public Health and Health Planning Council on February 12, 2015 to be established as operators of Delhi Nursing & Rehabilitation Center as members of DRNC Operating, LLC (CON# 142195). This ownership interest was not included in the Character and Competence – Background because the establishment of the facility has not been finalized.

A review of operations for Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Highland Rehabilitation and Nursing Center results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the Massachusetts Department of Public Health website as well as affidavits submitted by the applicant for Cambridge Rehabilitation and Nursing Center, Rehabilitation and Nursing Center at Everett, and Medford Rehabilitation and Nursing Center in the State of Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements disclosed.

#### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants.

#### Recommendation

**From a programmatic perspective, approval is recommended.**



## Financial Analysis

### Background

As Evergreen Valley Nursing Home was operating at a loss at the time of the execution of the original OTA and APA, and there were significant accounts payable and liabilities of the facility, the purchase prices were the assumption of certain liabilities. All collections on accounts receivable of the facility needed to be, and have been, applied solely to payment of the accounts payable of the facility.

### Real Estate Deed

PRNC Realty, LLC purchased the RHCF real property from EMS, with the assumption of the liabilities up to a cap of \$1,610,000. PRNC Realty, LLC is currently leasing the facility to Margaret Hassett. The details and terms of the real estate transaction are as follows:

Real Estate Sale Date:	September 19, 2014
Seller:	Eight Mickel Street Corporation
Buyer:	PRNC Realty, LLC
Purchase Price as recorded:	\$1,610,000
Purchased Assets:	All that tract, piece or parcel of land situated on the South Side of Bushey Boulevard and the East side of South Catherine Street and being totally within the City of Plattsburgh, County of Clinton and the State of NY. More particularly described in Exhibit A. Designated as Section 221.15 Block 3, Lot land also known as 8 Bushey Boulevard. See the Real-Estate APA below for details of the sale.

On September 22, 2014, PRNC Realty, LLC acquired a \$2,000,000 loan from M&T Bank to supplement personal equity of \$700,000 for the purchase of the realty and the operations. The loan is a Multiple Disbursement Term Loan with a maximum of \$4,000,000 available at 3.9375% on a 20-year term and amortization.

### Real Estate - Asset Purchase Agreement (APA)

Date:	Original APA June 1, 2014; Amended April 23, 2015 <sup>(1)</sup>
Seller:	Eight Mickel Street Corporation and Margaret B. Hassett
Buyer:	PRNC Realty, LLC
Purchase Price:	Payment of Assumed Payables and Assumed Liabilities up to a Cap of \$1,610,000
Payment of Purchase Price:	On effective date, payment of all Assumed Payables/Liabilities up to the Cap. In the event that the payment of the Assumed Payables, in order to fully satisfy them, is less than the Cap, all obligations relating to the Purchase Price shall have still been satisfied and no payment of money will be required of Purchaser. On Effective Date, all of the unpaid accounts receivable relating to the Facility shall be paid towards all accounts payable of the Facility, but any payments made by such receivables shall not be counted as payments of the Assumed Liabilities and shall not be counted as part of the Cap.
Guaranty:	Buyer (new Operator) shall have delivered a guaranty of Ephraim Zagelbaum and Lawrence Goldfarb with respect to the Assumed Liabilities and the Assumed Payables, and the performance of the terms under this Agreement and the OTA.
Purchased Assets described:	The property and buildings of the nursing home known as Evergreen Valley Nursing Home at 8 Bushey Blvd, Plattsburgh NY; and the adult day care program operated therein; and improvements. All tangible assets which comprise or are used or are held for use in connection with or are necessary to the operation of the business at the nursing home facility.

Excluded Assets:	All insurance policies; corporation organizational documents, books, tax records and seals; all rights arising under any contracts relating to any supplies or services provided to the nursing home facility, unless in separate written assignment.
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<sup>(1)</sup> Amendment April 23, 2014: Original Realty-APA reflected a purchase price for the realty of \$2.7M. The \$2.7M included \$1.61M for realty and \$1.09M for intangible personal property. The amendment removed reference to the accounts receivable and assets, changing the realty purchase price in the APA to \$1.61M and the OTA purchase price to \$1.09M. Guaranty of Ephraim Zagelbaum and Lawrence Goldfarb, with respect to the Assumed Liabilities and the Assumed Payables, were included in the APA.

### Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement to acquire the operating interests of the RHCF, conditional upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	Original Operations Transfer Agreement (OTA) June 1, 2014; Amended April 23, 2015 <sup>(2)</sup>
Seller:	Margaret B. Hassett
Buyer:	PRNC Operating, LLC
Purchase Price:	Payment of Assumed Payables and Assumed Liabilities up to a Cap of \$1,090,000.
Details of Purchase Price:	On effective date, payment of all Assumed Payables up to Cap. In the event that the payment of the Assumed Payables, in order to fully satisfy them, is less than the Cap, all obligations relating to the Purchase Price shall have still been satisfied and no payment of money will be required of Purchaser.
Guaranty:	Buyer (new Operator) shall have delivered a guaranty of Ephraim Zagelbaum and Lawrence Goldfarb with respect to the Assumed Liabilities and the Assumed Payables, and the performance of the terms under this Agreement and the APA.
Purchased Assets described:	All Intangible Personal Property in use for the operations of the nursing facility located at 8 Bushey Blvd, Plattsburgh NY, and the adult day care operated therein. All resident contracts and agreements pertaining to the facility.

<sup>(2)</sup> The April 23, 2015 amendment to the OTA reflected a price change from \$10 to \$1.09M for the purchase of the intangible personal property. All collections of accounts receivable of the facility have been applied against the accounts payable of the facility. Guaranty of Ephraim Zagelbaum and Lawrence Goldfarb, with respect to the Assumed Liabilities and the Assumed Payables, were included in the OTA.

The purchase price of the operations will be met with members' equity, with guaranty by Ephraim Zagelbaum and Lawrence Goldfarb if required. BFA Attachment A is a summary of the net worth of the members of PRNC Operating, LLC, which indicates the availability of sufficient funds.

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 June 22, 2015, the facility had a Medicaid liability of \$1,059,963 related to outstanding Cash Receipts Assessments due the Department.

## Lease Agreement

The applicant has submitted an executed lease rental agreement for the site that the new operator will occupy. The lease arrangement is a non-arm's length agreement, and the applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity. The lease agreement is summarized below:

Date:	December 17, 2014
Premises:	8 Bushey Blvd, Plattsburgh (Clinton County), New York
Landlord:	PRNC Realty, LLC
Tenant:	PRNC Operating, LLC
Term:	10 years commencing on the execution of the lease; thereafter an automatic renewal of 1 year, with a total term of 20 years from the Commencement Date.
Rental:	Annual Rent: \$239,528 Base \$144,646 + Taxes \$48,107 + Ins \$46,775
Provisions:	Base is equal to amount of Lessor's debt service on the initial permanent financing of the demised premises. Triple Net Lease. Tenant is responsible for taxes, general liability insurance, utilities and maintenance.

## Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
Revenues:		
Medicaid	\$129.70	\$3,463,793
Medicare	\$429.39	1,723,561
Private Pay/Other	\$334.27	607,718
Adult Day Health Care Program	\$123.50	<u>479,187</u>
Total Revenues		\$6,274,259
Expenses: (includes ADHCP)		
Operating		\$5,689,101
Capital		<u>289,528</u>
Total Expenses		\$5,978,629
Net Income		\$295,630
Total Patient Days		31,835
Occupancy %		98.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates by payor source. Revenue is expected to increase going forward due to marketing efforts in the community aimed at increasing utilization and patient mix.
- Expenses will be reduced by eliminating unnecessary overhead costs and eliminating outsourced staffing, which will not only reduce cost, but increase revenue by having experienced persons ensure proper billing of therapy department services.
- Utilization by payor source for the first year is anticipated as follows:

Medicare	12.6%
Medicaid	83.9%
Private Pay / Other	3.5%
- Breakeven occupancy is 93.38% or 30,335 patient days.

The projected budget appears reasonable.

## Capability and Feasibility

There are no project costs associated with this application.

The purchase price, up to a cap of \$1,090,000, for the operations of the nursing facility will be funded with members' equity. On September 19, 2014, PRNC Realty, LLC purchased the real property for a purchase price up to a cap of \$1,610,000. The purchase price has been funded with personal equity and a loan from M&T Bank at an interest rate currently at 3.9375% with a 20-year term and amortization. A guaranty of Ephraim Zagelbaum and Lawrence Goldfarb with respect to the Assumed Liabilities and the Assumed Payables, and the performance of the terms under the OTA and APA, has been executed.

Working capital requirements are estimated at \$996,438 based on two months of the first year budgeted expenses, and will be met with members' equity. Ephraim Zagelbaum has provided an affidavit stating he is willing to contribute resources disproportionate to his membership interest, to the extent that Yehuda Walden is unable to meet any equity requirements for this project.

BFA Attachment A is a summary of the net worth of the members of PRNC Operating, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment C is the pro-forma balance sheet of PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation & Nursing Center as of the first day of operation, which indicates a positive members' equity of \$2,086,438.

The submitted budget indicates a net profit of \$295,630 for year one. Annual rental expense is sufficient to cover the landlord's financing requirements. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B presents the financial summary of Evergreen Valley Nursing Home for periods 2011 through 2013 (certified) and 2014 (internal). The consolidated certified financials for 2011 through 2013 show the entity had an average negative net asset position of \$1,804,672, an average negative working capital position of \$1,713,869, and an average negative operating income of \$1,090,374 for the period. The financial summary presents the 2014 internal financial statements as well, which shows negative operating income of \$89,923 for the consolidated entity. Audited 2014 financials are unavailable as yet.

On June 1, 2014, the current operator of Evergreen Valley Nursing Home hired Mr. Zagelbaum as CEO of operations. The applicant discloses that since Mr. Zagelbaum took over the CEO duties, he has utilized his managerial expertise and experience to incorporate efficiencies necessary to achieve financial viability and turn the negative operating margin from 2013 into a positive one of \$295,630, as forecasted in year one shown above. Actions taken to improve financial operations to date include:

- Using existing in-house staff to perform services that were previously purchased, resulting in savings of \$185,000 annually.
- Eliminating certain unnecessary administrative and general expenses and supplies, resulting in a savings of over \$110,000.
- Increasing revenues by marketing in the community to increase utilization and patient mix to levels most beneficial for financial viability, resulting in additional revenues projected at \$1.2 million.
- Revamping the entire Therapy department, which was previously outsourced to a local therapist who lacked experience in providing treatment to seniors and was inexperienced with documentation required to ensure proper billing.

BFA Attachment D is a 2011 through 2014 financial summary of the combined operations for the members' affiliated RHCs. Audited financials of the combined operations of each nursing facility and its related realty company have been received for years through to 2013. Internal 2014 financials have been submitted, as the CPA's are still finalizing 2014. Review of the financial summary of the combined operations for the members' affiliated RHCs shows the following:

- Alpine Rehabilitation & Nursing Center had an average negative working capital position of \$673,379 and an average positive net asset position of \$329,506 for years 2011 through 2013. The reason for the negative working capital position was due to Medicaid rate adjustment liabilities. The entity achieved an average operating net income of \$812,791 for the same period. The internal financials for 2014 report a positive operating net income of \$1,105,316.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position of \$885,891 and an average negative net asset position of \$145,654 for years 2011 through 2013. The facility was newly acquired effective January 1, 2011, and the current owners are attempting to turn the operation around from the previous owners. The net operating income has increased each year from \$39,132 in 2011 to \$1,197,148 for 2013. The internal financials for 2014 report a positive operating net income of \$1,655,827.
- Tarrytown Hall Care Center had an average negative working capital position of \$1,060,194 and an average positive net asset position of \$660,810 for years 2011 through 2013. The average net operating income, for this period, is \$1,718,463. The negative working capital was largely due to the facility categorizing a \$2.8 million Medicaid base year rate adjustment in 2011 as an expense rather than as revenue. The internal financials for 2014 report a positive operating net income of \$1,917,629.
- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position of \$(734,678), a positive net asset position of \$936,481 and a net operating income \$967,521. The facility was still in transition from the previous owners. The unaudited internal financials present an operating net income of \$543,520.

BFA Attachment E is a 2011 through 2013 financial summary of the facility only operations for the members' affiliated RHCs. Audited financials of the facility only operations have been received for all years through 2013. No internal financials for 2014 were submitted for the facilities only. Review of the facility only operations for the members' affiliated RHCs shows the following:

- Alpine Rehabilitation & Nursing Center and Tarrytown Hall Center had an average negative working capital position and an average positive net asset position from 2011 through 2013. Also, the entities achieved an average operating net income/loss of \$62,366 and \$(70,092) respectively for the period.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position and an average negative net asset position from 2011 through 2013. Also, the entity achieved an average net operating loss of \$(32,857) for the period.
- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position, net asset position, and operating loss of \$(89,978).

Based on the preceding, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Net Worth Statement of the Members of PRNC Operating, LLC
BFA Attachment B	Financial Summary – Evergreen Valley Nursing Home
BFA Attachment C	Pro Forma for Plattsburgh Rehabilitation & Nursing Center
BFA Attachment D	Financial Summary - Combined Affiliated Facilities' Operating and related Realty
BFA Attachment E	Financial Summary – Affiliated Residential Health Care Facilities

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 6<sup>th</sup> day of August, 2015 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 PRNC Operating, LLC as the new operator of the 89-bed facility located 8 Bushey Boulevard, Plattsburgh currently operated as Evergreen Valley Nursing Home, 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:

151014 E

FACILITY/APPLICANT:

PRNC Operating, LLC  
d/b/a Plattsburgh Rehabilitation and Nursing  
Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period.  
[RNR]
4. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. (CSL)
5. Submission of the applicant's executed Operating Agreement, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]



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 # 151085-E  
AURNC Operating, LLC d/b/a Auburn Rehabilitation & Nursing Center

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Cayuga  
**Acknowledged:** March 5, 2015

**Executive Summary**

**Description**

AURNC Operating, LLC d/b/a Auburn Rehabilitation & Nursing Center, a New York limited liability company, seeks approval to be established as the operator of Auburn Nursing Home, a 92-bed Article 28 residential health care facility (RHCF) located at 85 Thornton Avenue, Auburn (Cayuga County). There will be no change in services provided.

On January 28, 2015, AURNC Operating, LLC and AURNC Realty, LLC, entities with identical ownership, entered into an Assignment, Assumption and Amendment of Asset Purchase Agreement and Real Estate Contract of Sale (hereby referred to as Assignment Agreement) for \$2,400,000. This Assignment Agreement is for the assignment of rights established under an asset purchase agreement (operations) and a real estate contract of sale (realty) that were entered into by Auburn Operating, LLC and Auburn Realty NY, LLC, respectively, on June 6, 2013, with the current operator of Auburn Nursing Home, Auburn AGT, LLC, and the real property owner DeRich Realty LTD.

AURNC Operating, LLC and AURNC Realty, LLC will purchase the operations and realty for a total purchase price of \$6,900,000 apportioned as follows: \$650,000 for the operations; \$3,850,000 for the real estate; and \$2,400,000 for the assignment agreement.

Ownership of the operations before and after the requested change is as follows:

Current Operator	Proposed Operator
Auburn AGT, LLC d/b/a Auburn Nursing Home	AURNC Operating, LLC d/b/a Auburn Rehabilitation & Nursing Center
John Ghertner 56%	Ephraim Zigelbaum 50%
Nancy Tourje 44%	Alexander Barth 30%
	Yehudah Walden 20%

Ownership of the Real Estate before and after the requested change is as follows:

Current RE Owner	Proposed RE Owner
DeRich Realty LTD	AURNC Realty LLC
Auburn Holdings LLC 100%	Ephraim Zigelbaum 50%
Members:	Alexander Barth 30%
John Ghertner 56%	Yehudah Walden 20%
Nancy Tourje 44%	

Concurrently under review, the applicant members are also seeking to acquire two other nursing facilities, Blossom View Nursing Home under CON # 151087 and Evergreen Valley Nursing Home under CON #151014.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

The change in ownership will not result in any change in beds or services. Auburn Nursing Home's utilization was 92.2% in 2011, 91.6% in 2012, and 92.8% in 2013. Current utilization, as of June 3, 2015, is 89.1% with 10 vacant beds.

### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All associated health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

### Financial Summary

AURNC Operating LLC will acquire the RHCF operating assets for \$650,000 which will be funded via a loan from AURNC Realty, LLC, financed at 5% interest for a ten-year term with payout period of thirty years. AURNC Realty, LLC will acquire the real property of the RHCF, financed through a bank loan with M&T Bank at 5% interest for a ten-year term with a payout period for the principal of twenty-five years. Affidavits have been received from each member committing to personally fund the balloon payment on the proposed loan should acceptable refinancing be unavailable.

Budget :	Revenues:	\$7,531,274
	Expenses:	<u>6,891,522</u>
	Gain:	\$639,752

## 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of the executed loan agreement from AURNC Realty LLC to AURNC Operating LLC acceptable to the Department of Health. [BFA]
5. Submission of an executed commitment letter for the project provided from a recognized lending institution at an interest rate, and terms acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
9. Submission of evidence of the transfer of the operational assets from Auburn AGT, LLC to the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**August 6, 2015**

# Need Analysis

## Project Description

AURNC Operating LLC seeks approval to become the established operator of Auburn Nursing Home, an existing 92-bed Article 28 residential health care facility, located at 85 Thorton Avenue, Auburn, 13021, in Cayuga County. Upon approval of this application, the facility will be renamed Auburn Rehabilitation & Nursing Center.

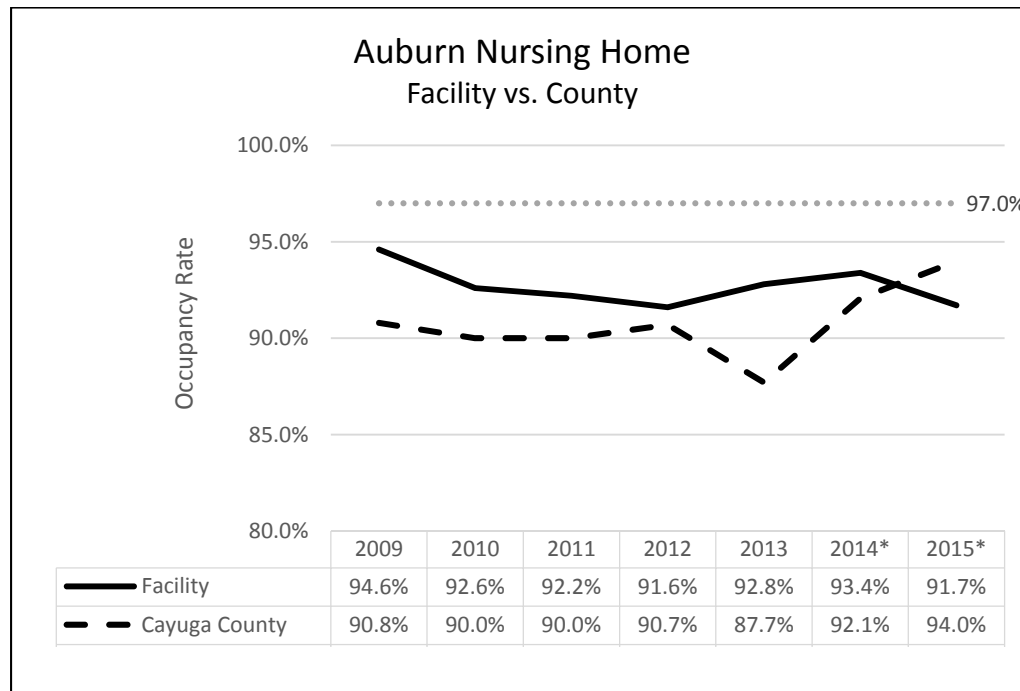
## Analysis

There is currently a surplus of 10 beds in Cayuga County as indicated in the following table:

### RHCF Need – Cayuga County

<b>2016 Projected Need</b>	502
<b>Current Beds</b>	529
<b>Beds Under Construction</b>	-17
<b>Total Resources</b>	512
<b>Unmet Need</b>	-10

The overall occupancy for Cayuga County was 87.7% for 2013 as indicated in the following chart:



\*unaudited; based on weekly census

Auburn Nursing Home's utilization was 92.2% in 2011, 91.6% in 2012, and 92.8% in 2013. According to the applicant, the facility experienced soft utilization in part due to an increase in short stay residents seeking rehabilitation and respite services, and in part due to increased referrals of more complex patients requiring services and care that the current operator is not able to provide. In addition, the applicant believes that in 2015, in anticipation of the facility being sold, the current operator has not been putting the same level of resources or effort into keeping the facility fully occupied.

The applicant intends to increase utilization in the following ways:

- Strengthen relationships with the community to increase referrals: establish ongoing relationships and work closely with local health care and social services providers to inform them of the programs being implemented to serve more medically complex patients;
- Serve a more acute resident population: provide programs and services to enable the facility to serve more medically complex individuals such as those with COPD, vascular insufficiencies, dementia (vascular and behavioral), and psycho-geriatric conditions. This will assist local hospitals participating in DSRIP initiatives to prevent readmissions and to discharge patients earlier; and
- Physical plant improvements to create a more comfortable and attractive environment for residents: upgrades to the physical plant include brand new resident furniture, medical and therapy equipment, flooring, lighting, and ceilings and window treatments. In addition to resident-related upgrades, the applicant plans to update the nurses' station, computer infrastructure, security/video cameras, and phone and call-bell systems. Overall facility upgrades include resident dining and activity areas, as well as the addition of new resident lounges.

#### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Auburn Nursing Home's Medicaid admissions of 9.4% exceeded the Cayuga County 75% rate of 7.1% in 2012. Auburn Nursing Home's Medicaid admissions of 16.7% did not exceed the Cayuga County 75% rate of 31.3% in 2013 and will be required to follow the contingency plans as noted below.

#### Conclusion

Although the county is overbedded, as a result of the recent closure of a nursing home site, contingent approval is being recommended as there is a continued need to preserve and strengthen existing RHCF resources. It is also expected that occupancy of the facility will reach a more optimum level in response to the measures proposed by the new operators.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Auburn Nursing Home	Auburn Rehabilitation and Nursing Center
Address	85 Thorton Avenue Auburn, NY 13021	Same
RHCF Capacity	92	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Auburn AGT, LLC	AURNC Operating, LLC d/b/a Auburn Rehabilitation and Nursing Center  Members: Ephraim Zagelbaum 50.0% Alexander Barth 30.0% Yehudah Walden 20.0%

### Character and Competence - Background

#### Facilities Reviewed

##### Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center (formerly known as St. Joseph Nursing Home Co. of Utica)	02/2015 to present

##### Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present

#### Individual Background Review

Ephraim Zagelbaum is a licensed New York State nursing home administrator and is considered to be in good standing. Mr. Zagelbaum has been the President/Chief Executive Officer at Personal Healthcare Management LLC since December 2012, a company administering business office functions for health facilities located in Tarrytown, New York. He was previously employed as the Administrator of Record at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center (formerly known as St. Joseph Nursing Home Co. of Utica)	02/2015 to present

Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present



Alexander Barth is a licensed New York State nursing home administrator and is considered to be in good standing. He also holds an EMT license, which is considered to be in good standing. Mr. Barth has been a managing partner at Personal Healthcare Management LLC since January 2013, a company administering business office functions for health facilities located in Tarrytown, New York. Previously he was employed as Administrator of Record at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center (formerly known as St. Joseph Nursing Home Co. of Utica)	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Yehudah Walden has been a managing member at Personal Healthcare Management LLC since 2010, a company administering business office functions for health facilities located in Tarrytown, New York. Mr. Walden discloses the following health facility ownership interests:

Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center (formerly known as St. Joseph Nursing Home Co. of Utica)	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

Ephraim Zigelbaum, Alexander Barth, and Yehudah Walden were approved by the Public Health and Health Planning Council on February 12, 2015 to be established as operators of Delhi Nursing & Rehabilitation Center as members of DRNC Operating, LLC (CON# 142195). This ownership interest was not included in the Character and Competence – Background because the establishment of the facility has not been finalized.

A review of operations for Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Highland Rehabilitation and Nursing Center, and Utica Rehabilitation & Nursing Center results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the Massachusetts Department of Public Health website as well as affidavits submitted by the applicant for Cambridge Rehabilitation and Nursing Center, Rehabilitation and Nursing Center at Everett, and Medford Rehabilitation and Nursing Center in the State of Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements disclosed.

#### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

## Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

## Recommendation

**From a programmatic perspective, approval is recommended.**

# Financial Analysis

## Financial Analysis

On June 6, 2013, Auburn AGT, LLC, the current operator of Auburn Nursing Home, and Auburn Operating, LLC entered into an Asset Purchase Agreement (APA) whereby Auburn Operating, LLC agreed to purchase the operations of the RHCF and certain other assets for \$650,000. Also on June 6, 2013, the owners of the real property, DeRich Realty LTD, with Auburn Holdings, LLC as the sole shareholder, entered into a Real Estate Stock Purchase Agreement (RESPA) for the sale of the real property to Auburn Realty NY, LLC for \$3,850,000.

After the execution of the above agreements, Auburn Operating, LLC withdrew its Certificate of Need application (CON #132256). On January 28, 2015, Auburn Operating, LLC and Auburn Realty NY, LLC entered into a Purchase and Sale Agreement and an Assignment, Assumption, and Amendment of Asset Purchase Agreement and Real Estate Contract of Sale (Assignment Agreement) whereby it assigned its rights, titles, and interest under the APA and RESPA to AURNC Operating, LLC and AURNC Realty, LLC, respectively.

## Purchase and Sale Agreement

Date:	January 28, 2015
Premises:	RHCF at 85 Thornton Avenue, Auburn, NY
Seller:	Auburn Realty NY LLC and Auburn Operating LLC
Buyer:	AURNC Realty LLC and AURNC Operating LLC
Assets Acquired:	Assignment, Assumption, and Amendment of Asset Purchase Agreement and Real Estate Contract of Sale documents executed in June 2013.
Purchase Price:	\$2,400,000
Payment of Purchase Price:	\$300,000 deposited into Escrow. Remaining \$2,100,000 will be paid through a bank loan.

## Assignment, Assumption, and Amendment of Asset Purchase Agreement and Stock Purchase Agreement

Date:	January 28, 2015
Assignor:	Auburn Operating LLC and Auburn Realty NY LLC
Assignee:	AURNC Operating LLC and AURNC Realty LLC
Assignment:	Real Estate Contract of Sale and Asset Purchase Agreement listed below.
Price:	None.

Asset Purchase Agreement

Date:	June 6, 2013
Seller:	Auburn AGT, LLC
Buyer:	Auburn Operating LLC
Asset Acquired:	All tangible Personal Property, Intellectual Property, Business contracts, Books and records, Seller deposits, Licenses, Personnel Records, Warranties, Covenants, Provider numbers, Insurance proceeds, Resident/Outpatient deposits, Appeals, and Other assets and property except those listed in excluded assets
Excluded Assets:	Seller's contracts other than the Business Contracts, claims against 3rd parties related to operations prior to the closing date, Non-transferable Licenses, Organizational documents, corporate seal, tax returns, and accounts receivable.
Assumption of Liabilities:	Purchaser shall not assume or become responsible for any Liabilities of the Seller.
Purchase Price:	\$650,000
Payment of Purchase Price:	\$105,000 deposited in escrow account. \$32,000 deposit in escrow at closing. The remaining \$513,000 will be paid through a bank loan.

Real Estate Stock Purchase Agreement

Date:	June 6, 2013
Premises:	85 Thornton Avenue, Auburn, NY
Seller:	Auburn Holdings, LLC
Buyer:	Auburn Realty NY LLC
Assets Acquired:	All Stock associated with DeRich Realty LTD which owns the premises listed above.
Purchase Price:	\$3,850,000
Payment of Purchase Price:	\$20,000 deposit in escrow on execution and \$192,500 on closing into escrow. Remaining \$3,850,000 will be paid through a bank loan.

The applicant has submitted an 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 the liability and responsibility. Currently, there are no outstanding audit liabilities or assessments.

AURNC Realty, LLC will fund the total cost of \$6,900,000 for all aforementioned agreements. A letter of interest has been received from M&T Bank for financing. The financing plan for the project is as follows:

Mortgage (5.5% interest, 10-year term, with a 25-year amortization) \$ 6,900,000

Affidavits have been received from each member committing to personally fund the balloon payment on the proposed loan should acceptable financing be unavailable at the time of refinancing.

Lease Agreement

The applicant has submitted an executed lease rental agreement for the site that the nursing home will occupy, which is summarized below:

Date:	December 17, 2014
Premises:	RHCF located at 85 Thornton Avenue, Auburn NY 13021
Landlord:	AURNC Realty LLC
Lessee:	AURNC Operating LLC
Term:	10 years with the option to renew for an additional 20 years.
Rental:	Debt service payment of Landlord
Provisions:	Lessee pays for all utilities, waste removal, maintenance and real estate taxes

An affidavit has been received attesting to the non-arm's length relationship between AURNC Realty, LLC and AURNC Operating, LLC. The members of AURNC Operating, LLC and AURNC Realty, LLC are identical owners with identical percentage ownership.

Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for year one subsequent to project completion, summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues</u>		
Medicaid	\$154.91	\$3,592,869
Medicare	\$388.32	1,975,398
Private Pay/Other	\$462.32	1,698,090
Assessment Revenue		<u>264,917</u>
Total Revenues		\$7,531,274
<u>Expenses</u>		
Operating	\$194.45	\$6,213,348
Capital	\$21.22	<u>678,174</u>
Total Expenses		\$6,891,522
Net Income		\$639,752
Total Patient Days		31,953
Occupancy %		95%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates.
- The applicant expects to improve the facility's bottom line by utilizing the applicant's members experience operating other RHCFs. The operating budget reflects a leaner, more efficient approach, including a reduction in excess professional and administrative salaries, which the members have been able to achieve at the other RHCFs they operate in New York State.
- The applicant anticipates that its community relationships, its aggressive outreach efforts and the manner in which its members will provide a higher quality, more home-like environment, will all contribute to a financially viable operation.
- Utilization by payer source for years one and three, based on historical experience, is expected as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicare	15.9%	17.4%
Medicaid	72.6%	71.1%
Private Pay / Other	11.5%	11.5%

- Breakeven utilization is projected at 87.07% and 88.17%, for year one or year three, respectively.

## Capability and Feasibility

There are no project costs associated with this application. AURNC Operating, LLC and AURNC Realty, LLC will be purchasing the operations and realty for a total purchase price of \$6,900,000 as follows: \$650,000 for the operations; \$3,850,000 for the real estate; and \$2,400,000 for the assignment. AURNC Realty, LLC will fund the total cost of \$6,900,000 for all aforementioned agreements. A letter of interest has been received from M&T Bank to provide financing at 5.5% interest for a ten-year term, with a twenty-five year amortization. Affidavits have been received from each member attesting to fund the balloon payment should acceptable financing be unavailable.

Working capital requirements are estimated at \$1,148,588 based on two months of the first year budgeted expenses, and will be met with a loan of \$574,294 and members' equity of \$574,294. A letter of interest has been submitted from M&T Bank for the working capital loan at 5% over 5 years. Yoel Zaglebaum, a non-member of both operating and property entities, has submitted an Affidavit which states that he is willing to contribute up to \$1,000,000 toward working capital requirements to the extent any of the members of AURNC Operating, LLC are unable to meet his or her requirement. Mr. Yoel Zaglebaum confirms he has no member interest in the operations of the RHCF, and that there are no repayment terms associated with the use of any funds he contributes. BFA Attachment B is a summary of the net worth of the members of AURNC Operating, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment C is the pro-forma balance sheet of AURNC Operating, LLC, d/b/a Auburn Rehabilitation & Nursing Center and AURNC Realty, LLC, as the first day of operation, which indicates positive members' equity of \$574,294.

The submitted budget indicates a net profit of \$639,752 for year one after the change in ownership. Annual rental expense is sufficient to cover the landlord's financing requirements. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is a 2011 through 2014 financial summary of the combined operations for the members' affiliated RHCFs. Audited financials of the combined operations of each nursing facility and its' related realty company have been received for years through to 2013. Internal 2014 financials have been submitted, as the CPA's are still finalizing 2014. Review of the financial summary of the combined operations for the members' affiliated RHCFs shows the following:

- Alpine Rehabilitation & Nursing Center had an average negative working capital position of \$673,379 and an average positive net asset position of \$329,506 for years 2011 through 2013. The reason for the negative working capital position was due to Medicaid rate adjustment liabilities. The entity achieved an average operating net income of \$812,791 for the same period. The internal financials for 2014 report a positive operating net income of \$1,105,316.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position of \$885,891 and an average negative net asset position of \$145,654 for years 2011 through 2013. The facility was newly acquired effective January 1, 2011, and the current owners are attempting to turn the operation around from the previous owners. The net operating income has increased each year from \$39,132 in 2011 to \$1,197,148 for 2013. The internal financials for 2014 report a positive operating net income of \$1,655,827.
- Tarrytown Hall Care Center had an average negative working capital position of \$1,060,194 and an average positive net asset position of \$660,810 for years 2011 through 2013. The average net operating income, for this period, is \$1,718,463. The negative working capital was largely due to the facility categorizing a \$2.8 million Medicaid base year rate adjustment in 2011 as an expense rather than as revenue. The internal financials for 2014 report a positive operating net income of \$1,917,629.

- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position of \$(734,678), a positive net asset position of \$936,481 and a net operating income \$967,521. The facility was still in transition from the previous owners. The unaudited internal financials present an operating net income of \$543,520.

BFA Attachment E is a 2011 through 2013 financial summary of the facility-only operations for the members' affiliated RHCs. Audited financials of the facility-only operations have been received for all years through 2013. No internal financials for 2014 were submitted for the facility-only operations. Review of the facility-only operations for the members' affiliated RHCs shows the following:

- Alpine Rehabilitation & Nursing Center and Tarrytown Hall Center had an average negative working capital position and an average positive net asset position from 2011 through 2013. Also, the entities achieved an average operating net income/loss of \$62,366 and \$(70,092) respectively for the period.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position and an average negative net asset position from 2011 through 2013. Also, the entity achieved an average net operating loss of \$(32,857) for the period.
- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position, net asset position, and operating loss of \$(89,978).

Based on the preceding, and subject to the noted contingencies, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

**From a financial perspective, contingent approval is recommended.**

<b>Attachments</b>
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BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement of the Members of AURNC Operating, LLC
BFA Attachment C	Pro Forma for AURNC Operating LLC d/b/a Auburn RNC
BFA Attachment D	Financial Summary - Combined Affiliated Facilities' Operating and related
BFA Attachment E	Realty
BFA Attachment F	Financial Summary – Affiliated Residential Health Care Facilities Auburn Agt LLC and Auburn Holdings – Consolidated Financial Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6<sup>th</sup> day of August, 2015 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 AURNC Operating, LLC as the new operator of Auburn Nursing Home, a 92-bed facility located at 85 Thornton venue, Auburn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that 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:

151085 E

FACILITY/APPLICANT:

AURNC Operating, LLC  
d/b/a Auburn Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of the executed loan agreement from AURNC Realty LLC to AURNC Operating LLC acceptable to the Department of Health. [BFA]
5. Submission of an executed commitment letter for the project provided from a recognized lending institution at an interest rate, and terms acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]



9. Submission of evidence of the transfer of the operational assets from Auburn AGT, LLC to the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151087-E**  
**BVRNC Operating, LLC d/b/a Blossom View Rehabilitation & Nursing Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Wayne  
**Acknowledged:** March 5, 2015

**Executive Summary**

**Description**

BVRNC Operating LLC, d/b/a Blossom View Rehabilitation & Nursing Center, a New York limited liability company, seeks approval to be established as the operator of Blossom View Nursing Home, a 129-bed Article 28 residential health care facility (RHCF) located at 6884 Maple Avenue, Sodus (Wayne County). With this application there will be a reduction of five RHCF beds bringing the total number of beds to 124. There will be no change in services provided.

On January 28, 2015, BVRNC Operating, LLC and BVRNC Realty, LLC, entities with identical ownership, entered into an Assignment, Assumption and Amendment of Asset Purchase Agreement and Real Estate Contract of Sale (hereby referred to as Assignment Agreement) for \$1,400,000. This Assignment Agreement is for the assignment of rights established under an asset purchase agreement (operations) and a real estate contract of sale (realty) that were entered into by Blossom View Operating, LLC and Blossom View Realty NY, LLC, respectively, on June 6, 2013, with the current operator of Blossom View Nursing Home, Blossom View Nursing Home, Inc., and the real property owner, Sodus Maple Land Company, Inc. and Crab Apple Land Company, Inc.

BVRNC Operating, LLC and BVRNC Realty, LLC will purchase the operations and realty for a total purchase price of \$10,400,000, apportioned as follows: \$1,300,000 for the operations; \$7,700,000 for the real estate; and \$1,400,000 for the assignment agreement.

Ownership of the operations before and after the requested change is as follows:

Current Operator	
Blossom View Nursing Home, Inc. d/b/a Blossom View Nursing Home	
John Ghertner	31.6%
Nancy Tourje	5.0%
John Hansen	31.6%
Estate of Lou Attoma	31.6%
Proposed Operator	
BVRNC Operating LLC d/b/a Blossom View Rehabilitation & Nursing Center	
Ephraim Zagelbaum	50%
Alexander Barth	30%
Yehudah Walden	20%

Ownership of the Real Estate before and after the requested change is as follows:

Current RE Owner	
Sodus Maple Land Company, Inc. (real property where facility is location)	
Crab Apple Land Company, Inc. (three adjacent vacant parcels)	
Proposed RE Owner	
BVRNC Realty LLC	
Ephraim Zagelbaum	50%
Alexander Barth	30%
Yehudah Walden	20%

Concurrently under review, the applicant members are also seeking to acquire Auburn Nursing Home under CON #151085 and Evergreen Valley Nursing Home under CON #151014.

OPCHSM Recommendation  
Contingent Approval

Need Summary

Approval of this application will result in maintaining a necessary community resource that provides needed services to the Medicaid population.

Program Summary

This application proposes to establish AURNC Operating, LLC d/b/a Auburn Rehabilitation and Nursing Center as the new operator of Auburn Nursing Home.

No negative information has been received concerning the character and competence of the proposed applicants. No administrative services or consulting agreements are proposed in this application. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard

to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

BVRNC Operating LLC will acquire the RHCF operating assets for \$1,300,000 which will be funded via a loan from BVRNC Realty LLC, financed at 5% interest for a ten-year term with a payout period of thirty years. BVRNC Realty LLC will acquire the real property of the RHCF, financed through a bank loan with M&T Bank at 5% interest for a ten-year term with a payout period for the principal of twenty-five years. Affidavits have been received from each member committing to personally fund the balloon payment on the proposed loan should acceptable refinancing be unavailable.

Budget:	
Revenues	\$12,478,686
Expenses	<u>11,381,025</u>
Gain	\$1,097,661

## Recommendations

Health Systems Agency  
The Finger Lakes HSA recommends Contingent Approval.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a signed Medicaid access agreement to meet or exceed the Medicaid access threshold in Wayne County, and a commitment to report actual accessibility rates to NYSDOH on an annual basis. [FLHSA]
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]
3. 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)
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy;
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
5. Submission and programmatic review of the plan for the 5 bed reduction; the plan must specify the actual beds to be decertified and show the affected nursing units. [LTC]
6. Submission of an executed commitment letter for the project provided from a recognized lending institution at an interest rate, and terms acceptable to the Department of Health. (BFA)
7. Submission of an executed loan agreement from BVRNC Realty LLC to BVRNC Operating LLC. (BFA)
8. Submission of an executed working capital loan commitment acceptable to the Department of Health. (BFA)
9. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
10. Submission of an executed Articles of Organization, acceptable to the Department. [CSL]
11. Submission of evidence of the transfer of the operational assets from Blossom View Nursing Home, Inc. to the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**August 6, 2015**

# Need Analysis

## Project Description

BVRNC Operating, LLC seeks approval to become the established operator of Blossom View Nursing Home, an existing 129-bed Article 28 residential health care facility located at 6884 Maple Avenue, Sodus, 14551, in Wayne County. Upon approval, the facility will reduced its total bed capacity by five RHCf beds and will operate the 124-bed facility under the name Blossom View Rehabilitation & Nursing Center.

Blossom View Nursing Home	Current	Proposed Action	Upon Completion
RHCf Beds	129	(5)	124
<b>Total</b>	<b>129</b>	<b>(5)</b>	<b>124</b>

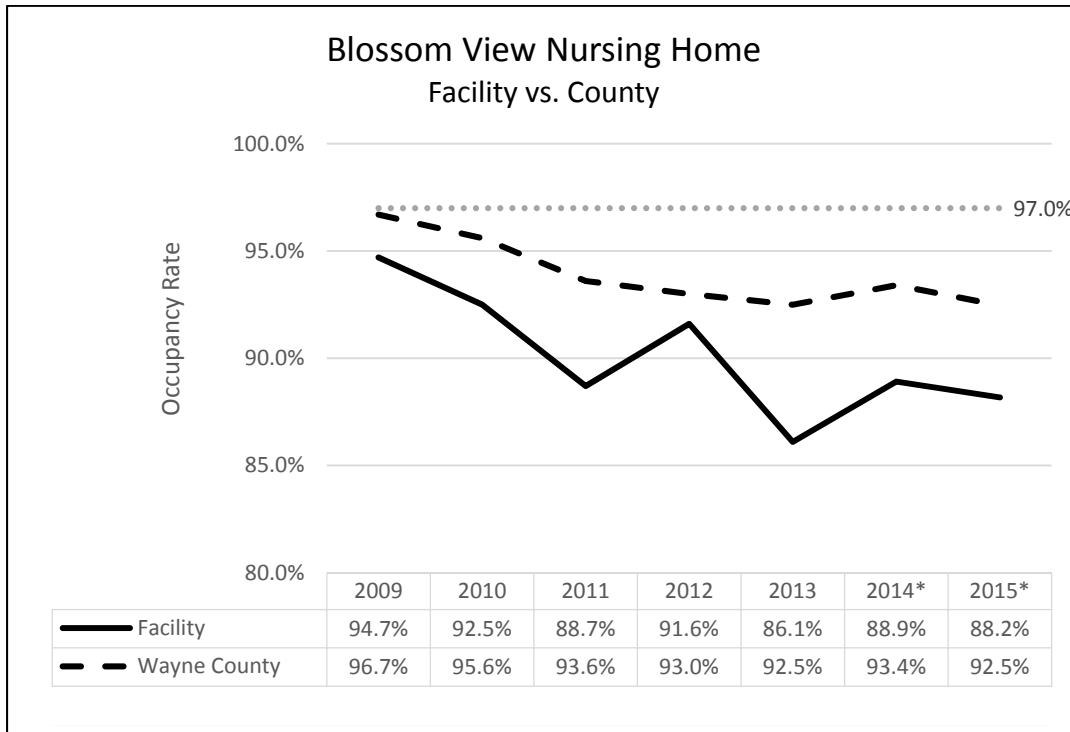
## Analysis

There is currently a need for 84 beds in Wayne County, as indicated in the table below.

### RHCf Need – Wayne County

<b>2016 Projected Need</b>	635
<b>Current Beds</b>	551
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	551
<b>Unmet Need</b>	84

Blossom View Nursing Home's occupancy was 88.7% in 2011, 91.6% in 2012, and 86.1% in 2013. Current occupancy, as of June 10, 2015, is 86.8%, with 17 vacant beds. The overall occupancy for Wayne County is 92.5% for 2013.



\*unaudited; based off weekly census

Blossom View Nursing Home's occupancy was 88.7% in 2011, 91.6% in 2012, and 86.1% in 2013. The current operator indicated that the fluctuation in occupancy rates was due to various factors, including but not limited to the following:

- An increase in acute short stay admissions and decrease in chronic admissions;
- Infection control precautions requiring the admission of residents with CDIFF, MRSA, etc. to private rooms, which limits occupancy of the facility's full bed capacity;
- Higher acuity patients, as well as patients with dementia, behavioral health issues, drug and alcohol issues, and inmates with a history of sexual offenses are referred to other facilities. The current operator is not equipped to address these conditions and therefore has been unable to accept those patients;
- High cost pharmaceutical residents limit facility admissions since expenditures exceed income;
- Decreased facility marketing due to the departure of the individual responsible for that task. Other factors influencing the decline in marketing have been the economy and cuts to Medicaid/Medicare income; and
- Once the current owners decided in 2012 to sell the facility, they reduced efforts to increase occupancy.

In addition to the five-bed reduction, the applicant intends to increase occupancy in the following ways:

- Strengthen relationships within the community to increase the number and types of referrals. They will work closely with local health care and social services providers, including hospitals, adult care facilities, assisted living programs, senior citizens centers, religious organizations, community centers, and the Wayne County Department of Social Services;
- Add programs and services that will allow the facility to serve more medically complex individuals: implement programs and services for residents with COPD, vascular insufficiencies, dementia (vascular and behavioral), and psycho-geriatric conditions. This will assist local hospitals participating in DSRIP initiatives to prevent readmissions and to discharge patients at an earlier time; and
- Extensive physical plant improvements to improve the overall resident experience: Resident upgrades will include brand new furniture, medical and therapy equipment, flooring, wallpaper, lighting, and ceiling and window treatments as well as updating resident dining and activity areas and adding new resident lounge areas. Other facility improvements include updates to the nurses' station, computer infrastructure and security/video cameras, phone system and call-bell systems overhaul.

The applicant has also applied for a Capital Restructuring Financing Program grant to accomplish the following:

- Open a 20-bed behavioral unit, provide training to staff which will enable them to assess and re-assess resident conditions and to modify care before a higher level of hospital based intervention occurs. This addresses the needs of Wayne County residents who require such services and must currently seek services outside of the county. Currently, there is only one facility within the county providing these services and that facility is reported to have a long admission waiting list; and
- Create and implement an Integrated Delivery System to allow the facility to connect to multiple service providers, creating real time access to treat residents. This access has the ability to reduce hospitalizations and re-hospitalizations, and reduce the cost of care for the residents.

#### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Blossom View Nursing Home's Medicaid admissions of 20.7% in 2012 and 24.7% in 2013 exceeded the Wayne County 75% rates of 13.6% in 2012 and 17.4% in 2013.

**Conclusion**

Approval of this application will result in the maintenance of a necessary community resource that provides needed services to the Medicaid population.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<h2>Program Analysis</h2>
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**Facility Information**

	Existing	Proposed
Facility Name	Blossom View Nursing Home	Blossom View Rehabilitation and Nursing Center
Address	6884 Maple Avenue Sodus, NY 14551	Same
RHCF Capacity	129	124
ADHC Program Capacity	N/A	Same
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Blossom View Nursing Home, Inc.	BVRNC Operating, LLC d/b/a Blossom View Rehabilitation and Nursing Center  Members: Ephraim Zagelbaum      50.0% Alexander Barth        30.0% Yehudah Walden        20.0%

**Character and Competence - Background**

Facilities Reviewed

Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center (formerly known as St. Joseph Nursing Home Co. of Utica)	02/2015 to present

Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present



Individual Background Review

Ephraim Zagelbaum is a licensed New York State nursing home administrator and is considered to be in good standing. Mr. Zagelbaum has been the President/Chief Executive Officer at Personal Healthcare Management LLC since December 2012, a company administering business office functions for health facilities located in Tarrytown, New York. He was previously employed as the Administrator of Record at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Alexander Barth is a licensed New York State nursing home administrator and is considered to be in good standing. He also holds an EMT license, which is considered to be in good standing. Mr. Barth has been a managing partner at Personal Healthcare Management LLC since January 2013, a company administering business office functions for health facilities located in Tarrytown, New York. Previously he was employed as Administrator of Record at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Yehudah Walden has been a managing member at Personal Healthcare Management LLC since 2010, a company administering business office functions for health facilities located in Tarrytown, New York. Mr. Walden discloses the following health facility ownership interests:

Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation & Nursing Center	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden were approved by the Public Health and Health Planning Council on February 12, 2015 to be established as operators of Delhi Nursing & Rehabilitation Center as members of DRNC Operating, LLC (CON# 142195). This ownership interest was not included in the Character and Competence – Background because the nursing home is currently under construction.

A review of operations for Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Highland Rehabilitation and Nursing Center, and Utica Rehabilitation & Nursing Center results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the Massachusetts Department of Public Health website as well as affidavits submitted by the applicant for Cambridge Rehabilitation and Nursing Center, Rehabilitation and Nursing Center at Everett, and Medford Rehabilitation and Nursing Center in the State of Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements disclosed.

**Project Review**

This application proposes to reduce the bed complement by five beds. A contingency identifying the actual beds to be taken out of service and the resulting nursing units will be required.

No administrative services or consulting agreements are proposed in this application.

**Conclusion**

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

**Recommendation**

**From a programmatic perspective, contingent approval is recommended.**

<b>Financial Analysis</b>
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**Financial Analysis**

On June 6, 2013, Blossom View Nursing Home, Inc., the current operator of Blossom View Nursing Home, and Blossom View Operating, LLC entered into an Asset Purchase Agreement (APA) whereby Blossom View Operating, LLC agreed to purchase the operations of the RHCF and certain other assets for \$1,300,000. Also on June 6, 2013, the owners of the real property, Sodus Maple Land Company and Crab Apple Land Company, Inc., entered into a Real Estate Contract of Sale (RECS) for the sale of the real property to Blossom View Realty NY, LLC for \$7,700,000.

After the execution of the above agreements, Blossom View Operating, LLC withdrew its Certificate of Need application (CON #132255) and did not proceed with the anticipated change in ownership of Blossom View Nursing Home. On January 28, 2015, Blossom View Operating, LLC and Blossom View Realty NY, LLC entered into a Purchase and Sale Agreement and an Assignment, Assumption, and Amendment of Asset Purchase Agreement and Real Estate Contract of Sale, whereby they assigned their rights, titles, and interest under the APA and RECS to BVRNC Operating, LLC and BVRNC Realty, LLC, respectively.

**Purchase and Sale Agreement**

Date:	January 28, 2015
Premises:	RHCF on 6884 Maple Avenue, Sodus NY 14551
Seller:	Blossom View Operating, LLC and Blossom View Realty NY, LLC
Buyer:	BVRNC Operating, LLC and BVRNC Realty, LLC
Assets Acquired:	Assignment, Assumption, and Amendment of Asset Purchase Agreement and Real Estate Contract of Sale documents executed in June 2013.
Purchase Price:	\$1,400,000
Payment of Purchase Price:	\$300,000 deposited into Escrow. Remaining \$1,100,000 will be paid through a bank loan.

Assignment, Assumption, and Amendment of Asset Purchase Agreement and Stock Purchase Agreement

Date:	January 28, 2015
Assignor:	Blossom View Operating, LLC and Blossom View Realty NY, LLC
Assignee:	BVRNC Operating, LLC and BVRNC Realty, LLC
Assignment	Real Estate Contract of Sale and Asset Purchase Agreement listed below.
Price:	None.

Asset Purchase Agreement

Date:	June 6, 2013
Seller:	Blossom View Nursing Home, Inc.
Buyer:	Blossom View Operating, LLC
Asset Acquired:	All tangible Personal Property, Intellectual Property, Business contracts, Books and records, Seller deposits, Licenses, Personnel Records, Warranties, Covenants, Provider numbers, Insurance proceeds, Resident/Outpatient deposits, Appeals, and Other assets and property except those listed in excluded assets
Excluded Assets:	Seller's contracts other than the Business Contracts, claims against 3rd parties related to operations prior to the closing date, Non-transferable Licenses, Organizational documents, corporate seal, tax returns, and accounts receivable.
Assumption of Liabilities:	Purchaser shall not assume or become responsible for any Liabilities of the Seller.
Purchase Price:	\$1,300,000
Payment of Purchase Price:	\$230,000 deposited in escrow account. The remaining \$1,070,000 will be paid through a bank loan.

Real Estate Contract of Sale

Date:	June 6, 2013
Premises:	RHCF on 6884 Maple Avenue, Sodus NY 14551
Seller:	Sodus Maple Land Company, Inc. and Crab Apple Land Company, Inc.
Buyer:	Blossom View Realty NY, LLC
Assets Acquired:	Real property of 6884 Maple Avenue, Sodus, NY owned by Sodus Maple Land Company, Inc. and 26 acres of vacant land owned by Crab Apple Land Company, Inc.
Purchase Price:	\$7,700,000
Payment of Purchase Price:	\$20,000 deposit in escrow. Remaining \$7,680,000 will be paid through a bank loan.

The applicant has submitted an 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 the liability and responsibility. Currently, there are no outstanding Medicaid audit liabilities or assessments.

BVRNC Realty, LLC will fund the total cost of \$10,400,000 for all aforementioned agreements. A letter of interest has been received from M&T Bank. The financing plan for the project is as follows:

Mortgage (5.5% interest, 10-year term, with a 25-year amortization)                      \$ 10,480,000

Affidavits have been received from each member committing to personally fund the balloon payment on the proposed loan should acceptable financing be unavailable at the time of refinancing.

#### Lease Agreement

The applicant has submitted an executed lease rental agreement for the site that the nursing home will occupy, which is summarized below:

Date:	December 17, 2014
Premises:	RHCF located at 6884 Maple Avenue, Sodus NY 14551
Landlord:	BVRNC Realty, LLC
Lessee:	BVRNC Operating, LLC
Term:	10 years with the option to renew for an additional 20 years.
Rental:	Debt service payment of Landlord
Provisions:	Lessee pays for all utilities, waste removal, maintenance and real estate taxes

An affidavit has been received attesting to the non-arm's length relationship between BVRNC Realty, LLC and BVRNC Operating, LLC. The members of BVRNC Operating, LLC and BVRNC Realty, LLC are identical owners with identical percentage ownership.

#### Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for year one subsequent to project completion, summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues:</u>		
Medicare	\$436.58	\$3,279,166
Medicaid	\$179.80	5,018,562
Private Pay	\$392.64	3,607,219
Other (cafeteria, misc.)		39,027
Outpatient Clinic		<u>534,712</u>
Total Revenues		\$12,478,686
<u>Expenses:</u>		
Operating	\$237.41	\$10,398,680
Capital	\$22.43	<u>982,345</u>
Total		\$11,381,025
Net Income		\$1,097,661
Total Patient Days		43,801
Occupancy %		96.78%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates.
- The applicant expects to improve the facility's bottom line by utilizing the applicant's members experience operating other RHCFs. The operating budget reflects a leaner, more efficient approach, including a reduction in excess professional and administrative salaries, which the members have been able to achieve at the other RHCFs they operate in New York State.
- Utilization by payer source for years one and three, based on historical experience, is expected as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicare	17.1%	19.2%
Medicaid	63.7%	61.1%
Private Pay / Other	19.1%	19.6%

- Breakeven utilization is projected at 88.3% and 89.1% for year one and year three, respectively.

## Capability and Feasibility

There are no project costs associated with this application.

BVRNC Operating, LLC and BVRNC Realty, LLC will be purchasing the operations and realty for a total purchase price of \$10,400,000 as follows: \$1,300,000 operations, \$7,700,000 real estate, and \$1,400,000 assignment. BVRNC Realty, LLC will fund the total cost of \$10,400,000 for all aforementioned agreements. A letter of interest has been received from M&T Bank to provide financing at 5.5% interest for a ten-year term, with a twenty-five year amortization. Affidavits have been received from each member attesting to fund the balloon payment should acceptable refinancing not be available.

Working capital requirements are estimated at \$1,896,838 based on two months of the first year budgeted expenses, and will be met with a loan of \$948,419 and members' equity of \$948,419. A letter of interest has been submitted from M&T Bank for the working capital loan at 5% over five years. Yoel Zaglebaum, a non-member of both operating and property entities, has submitted an Affidavit which states that he is willing to contribute up to \$1,300,000 toward working capital requirements to the extent any of the members of BVRNC Operating, LLC are unable to meet his or her requirement. Mr. Yoel Zaglebaum confirms he has no member interest in the operations of the RHCF, and that there are no repayment terms associated with the use of any funds he contributes. BFA Attachment B is a summary of the net worth of the members of BVRNC Operating, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment C is the pro-forma balance sheet of BVRNC Operating, LLC d/b/a Blossom View Rehabilitation & Nursing Center as the first day of operation, which indicates positive members' equity of \$948,419.

The submitted budget indicates a net profit of \$1,097,661 for Year One after the change in ownership. Annual rental expense is sufficient to cover the landlord's financing requirements. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is a 2011 through 2014 financial summary of the combined operations for the members' affiliated RHCFs. Audited financials of the combined operations of each nursing facility and its' related realty company have been received for years through to 2013. Internal 2014 financials have been submitted, as the CPA's are still finalizing 2014. Review of the financial summary of the combined operations for the members' affiliated RHCFs shows the following:

- Alpine Rehabilitation & Nursing Center had an average negative working capital position of \$673,379 and an average positive net asset position of \$329,506 for years 2011 through 2013. The reason for the negative working capital position was due to Medicaid rate adjustment liabilities. The entity achieved an average operating net income of \$812,791 for the same period. The internal financials for 2014 report a positive operating net income of \$1,105,316.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position of \$885,891 and an average negative net asset position of \$145,654 for years 2011 through 2013. The facility was newly acquired effective January 1, 2011, and the current owners are attempting to turn the operation around from the previous owners. The net operating income has increased each year from \$39,132 in 2011 to \$1,197,148 for 2013. The internal financials for 2014 report a positive operating net income of \$1,655,827.
- Tarrytown Hall Care Center had an average negative working capital position of \$1,060,194 and an average positive net asset position of \$660,810 for years 2011 through 2013. The average net operating income, for this period, is \$1,718,463. The negative working capital was largely due to the facility categorizing a \$2.8 million Medicaid base year rate adjustment in 2011 as an expense rather than as revenue. The internal financials for 2014 report a positive operating net income of \$1,917,629.

- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position of \$(734,678), a positive net asset position of \$936,481 and a net operating income \$967,521. The facility was still in transition from the previous owners. The unaudited internal financials present an operating net income of \$543,520.

BFA Attachment E is a 2011 through 2013 financial summary of the facility-only operations for the members' affiliated RHCs. Audited financials of the facility-only operations have been received for all years through 2013. No internal financials for 2014 were submitted for the facility-only operations. Review of the facility-only operations for the members' affiliated RHCs shows the following:

- Alpine Rehabilitation & Nursing Center and Tarrytown Hall Center had an average negative working capital position and an average positive net asset position from 2011 through 2013. Also, the entities achieved an average operating net income/loss of \$62,366 and \$(70,092) respectively for the period.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position and an average negative net asset position from 2011 through 2013. Also, the entity achieved an average net operating loss of \$(32,857) for the period.
- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position, net asset position, and operating loss of \$(89,978).

Based on the preceding, and subject to the noted contingencies, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement of the Members of BVRNC Operating, LLC
BFA Attachment C	Pro Forma for BVRNC Operating LLC d/b/a Blossom View RNC
BFA Attachment D	Financial Summary - Combined Affiliated Facilities' Operating and related Realty
BFA Attachment E	Financial Summary – Affiliated Residential Health Care Facilities
BFA Attachment F	Blossom View Nursing Home, Inc. - Financial Summary
BNHLC Attachment A	Quality Measures and Inspection Report

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 6<sup>th</sup> day of August, 2015 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 BVRNC Operating, LLC as the new operator of the existing 129-bed facility located at 6884 Maple Avenue, Sodus, and decertify 5 RHCf beds, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151087 E

BVRNC Operating, LLC d/b/a Blossom View  
Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a signed Medicaid access agreement to meet or exceed the Medicaid access threshold in Wayne County, and a commitment to report actual accessibility rates to NYSDOH on an annual basis. [FLHSA]
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]
3. 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)
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy;
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
5. Submission and programmatic review of the plan for the 5 bed reduction; the plan must specify the actual beds to be decertified and show the affected nursing units. [LTC]
6. Submission of an executed commitment letter for the project provided from a recognized lending institution at an interest rate, and terms acceptable to the Department of Health. (BFA)
7. Submission of an executed loan agreement from BVRNC Realty LLC to BVRNC Operating LLC. (BFA)
8. Submission of an executed working capital loan commitment acceptable to the Department of Health. (BFA)



9. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
10. Submission of an executed Articles of Organization, acceptable to the Department. [CSL]
11. Submission of evidence of the transfer of the operational assets from Blossom View Nursing Home, Inc. to the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151182-E  
1 Bethesda Drive Operating Company, LLC d/b/a Elderwood  
at Hornell

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Steuben  
**Acknowledged:** April 22, 2015

**Executive Summary**

**Description**

1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell, a New York limited liability company, requests approval to be established as the operator of McAuley Manor at MercyCare, a 112-bed Article 28 residential health care facility (RHCF) located at One Bethesda Drive, North Hornell (Steuben County). The facility is currently operated by St. James Mercy Hospital and is also licensed for two respite beds and a 26-slot Adult Day Health Care Program (ADHCP). Upon approval of this application, the facility will transition from a hospital-based voluntary/not-for-profit facility to a freestanding proprietary facility. The assumed name of the RHCF will be Elderwood at Hornell. There will be no change in services as a result of this project.

On April 6, 2015, Post Acute Partners Acquisition, LLC, a Delaware limited liability company, entered into an Asset Purchase Agreement (APA) with the operator of McAuley Manor at MercyCare to purchase the operating interests and certain assets of the RHCF. Post Acute Partners Acquisition, LLC will assign the operating interests to 1 Bethesda Drive Operating Company, LLC. Included in the APA, Post Acute Partners Acquisition, LLC agreed to purchase the real property assets of McAuley Manor at MercyCare, including all buildings, structures, and improvements related to the real property. Post Acute Partners Acquisition, LLC will assign the acquisition of the real property assets to 1 Bethesda Drive, LLC. The landlord, 1 Bethesda Drive, LLC, will enter into a lease agreement with 1 Bethesda Drive Operating

Company, LLC for site control of the facility. The applicant will enter into an administrative services agreement with Elderwood Administrative Services, LLC.

The current and proposed operators of the RHCF are as follows:

<b>Current Operator</b>	
St. James Mercy Hospital (100%) (Voluntary Not-For-Profit)	
<b>Proposed Operator</b>	
1 Bethesda Drive Operating Company, LLC	
<b>Members</b>	<b>%</b>
1 Bethesda Drive Operating Holdco, LLC	100%
<b>Members</b>	<b>%</b>
Warren Cole	50%
Jeffrey Rubin	50%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
McAuley Manor at MercyCare's occupancy was 94.4% in 2011, 97.0% in 2012 and 95.4% in 2013, far in 2015, occupancy was approximately 93.4% and 96.3%, respectively.

### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All associated health care facilities are in substantial compliance with all rules and regulations. The applicant has entered into an administrative services contract. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care 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 acquisition of the operating interest and the real estate interests for the RHCf is \$5,500,000. The portion allocated to the operation is \$1,100,000 and the real estate is \$4,400,000.

The purchase price for the operation will be met as follows: Equity of \$20,431 via the proposed members and an intercompany loan of \$1,079,569 from 1 Bethesda Drive, LLC at an interest rate of 3.15% for a 30-year term and amortization. The purchase price for the real estate will be met as follows: Equity of \$81,723 via the proposed members and a loan of \$4,318,277 at an interest rate of 3.15% for a 30-year term and amortization. The applicant submitted a letter of interest in regard to the financing.

Budget:	Revenues	\$9,772,643
	Expenses	<u>9,057,389</u>
	Net Income	\$715,254

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Contingent Approval of this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a signed Medicaid access agreement to meet or exceed the Medicaid access threshold in Steuben County, and a commitment to report actual accessibility rates to NYSDOH on an annual basis. [FLHSA]
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]
3. 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]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
5. Submission of all consulting and services agreements between the applicant and Elderwood Administrative Services, LLC, or any other entity. [LTC]
6. Submission of an executed assignment of rights for the operating interest to 1 Bethesda Drive Operating Company, LLC, acceptable to the Department. [BFA]
7. Submission of an executed assignment of rights for the real estate interest to 1 Bethesda Drive, LLC, acceptable to the Department. [BFA]
8. Submission of an executed intercompany loan commitment, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
10. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA]
11. Submission of an executed building lease, acceptable to the Department. [BFA]
12. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
13. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]

14. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of the applicant's executed proposed Administrative Services Agreement, which is acceptable to the Department. [CSL]
18. Submission of a photocopy of the executed proposed 1 Bethesda Drive Operating Holdco, LLC's Operating Agreement, which is acceptable to the department. [CSL]
19. Submission of a photocopy of the executed proposed 1 Bethesda Drive Operating Holdco, LLC's Articles of Organization, which is acceptable to the department. [CSL]
20. Submission of a photocopy of the executed proposed 1 Bethesda Drive Operating Holdco, LLC's Application for Authority, which is acceptable to the department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date  
**August 6, 2015**

# Need Analysis

## Project Description

1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell seeks approval to become the established operator of McAuley Manor at MercyCare, a 112-bed Article 28 residential health care facility (RHCF), located at 1 Bethesda Drive, North Hornell, 14843 in Steuben County. The current operator is St. James Mercy Hospital.

## Analysis

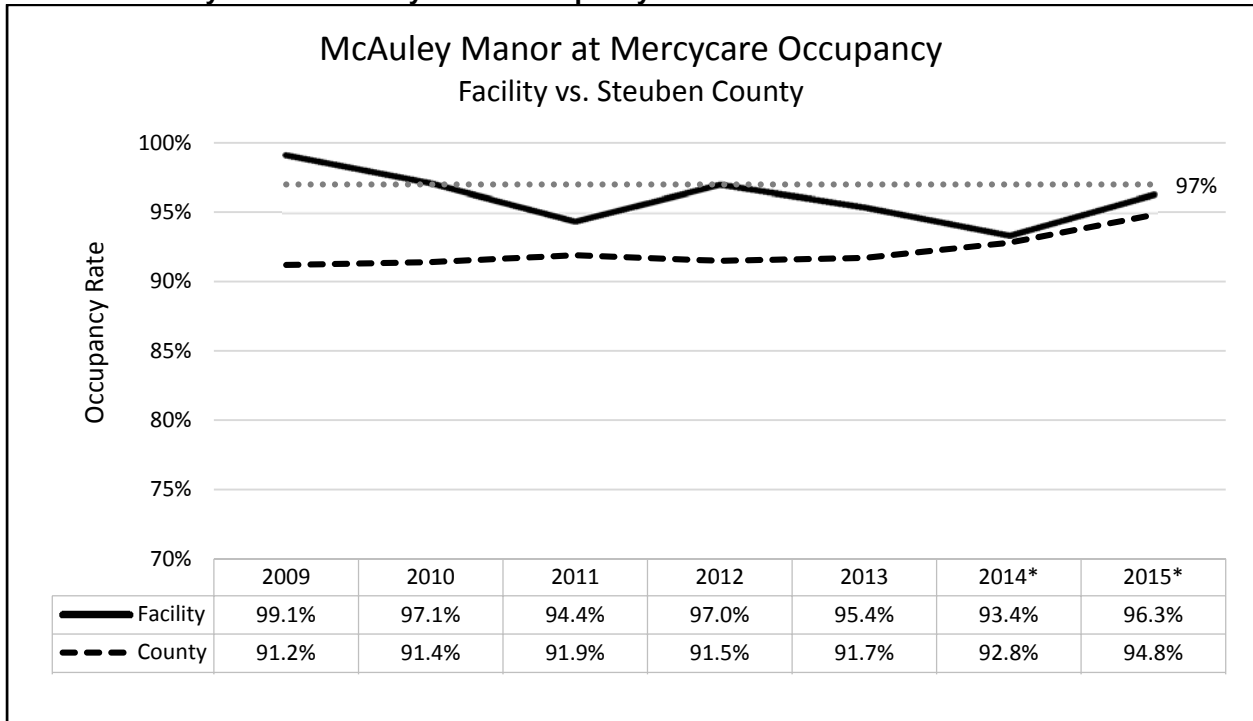
There is currently no unmet need for beds in Steuben County, as indicated in the table below:

**Table 1: RHCF Need – Rensselaer County**

<b>2016 Projected Need</b>	691
<b>Current Beds</b>	691
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	691
<b>Unmet Need</b>	0

The overall occupancy for Steuben County is 91.7% in 2013 as indicated in the chart below:

**Chart 1: McAuley Manor at MercyCare's Occupancy Rates**



\*unaudited; based on weekly census

McAuley Manor at MercyCare's occupancy was 94.4% in 2011, 97.0% in 2012 and 95.4% in 2013. For 2014 and thus far in 2015, occupancy averaged approximately 93.4% and 96.3%, respectively.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

McAuley Manor at MercyCare's Medicaid admissions for 2012 and 2013 are 30.9% and 19.3%, respectively. This facility exceeded Steuben County's 75% Medicaid admission threshold rates in 2012 and 2013 of 21.9% and 16.5%, respectively.

Conclusion

Approval of this application will help maintain a needed resource for McAuley Manor's residents and for the county.

Recommendation

**From a need perspective, contingent approval is recommended.**

<h2 style="margin: 0;">Program Analysis</h2>
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Facility Information

	Existing	Proposed
Facility Name	McAuley Manor at MercyCare	Elderwood at Hornell
Address	One Bethesda Drive N Hornell, NY 14843 PFI: 3902	Same
RHCF Capacity	112	Same
ADHC Program Capacity	26	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	St. James Mercy Hospital	1 Bethesda Drive Operating, LLC d/b/a Elderwood at Hornell  Sole Member: 1 Bethesda Drive Holdco, LLC  Members; Warren Cole                   50.00% Jeffrey Rubin                 50.00% 100.00%

Character and Competence - Background

Facilities Reviewed

NYS Nursing Homes

Elderwood at Hamburg		07/2013 to present
Elderwood at Liverpool		07/2013 to present
Elderwood at Amherst		07/2013 to present
Elderwood at Grand Island		07/2013 to present
Elderwood at Lancaster		07/2013 to present
Elderwood at Cheektowaga		07/2013 to present
Elderwood at Williamsville		07/2013 to present
Elderwood at Waverly		07/2013 to present
Elderwood at Wheatfield		07/2013 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville		07/2013 to present
Elderwood Assisted Living at Wheatfield		07/2013 to present
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present

NYS Pharmacy

Woodmark Pharmacy of New York, LLC		07/2013 to present
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Alabama

Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
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California

Care Alternatives of California	HOS	07/2005-10/2009
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Connecticut

Danbury Health Care Center	SNF	07/2005-10/2009
Darien Health Care Center	SNF	07/2005- 2007
Golden Hill Health Care Center	SNF	07/2005-10/2009
Long Ridge of Stamford	SNF	07/2005-10/2009
Newington Health Care Center	SNF	07/2005-10/2009
River Glen Health Care Center	SNF	07/2005-10/2009
The Highlands Health Care Center	SNF	07/2005-10/2009
West River Health Care Center	SNF	07/2005-10/2009
Westport Health Care Center	SNF	07/2005-10/2009
Wethersfield Health Care Center	SNF	07/2005-10/2009
Partners Pharmacy of Connecticut	RX	07/2005-10/2009

Kansas

Care Alternatives of Kansas	HOS	07/2005-10/2009
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Maryland

Montgomery Village Health Care Center	SNF	07/2005-10/2009
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Massachusetts

Brookline Health Care Center	SNF	07/2005-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2005-10/2009
Cedar Hill Health Care Center	SNF	07/2005-10/2009
Concord Health Care Center	SNF	07/2005-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2005-10/2009
Holyoke Health Care Center	SNF	07/2005-10/2009
Lexington Health Care Center	SNF	07/2005-10/2009
Lowell Health Care Center	SNF	07/2005-10/2009
Milbury Health Care Center	SNF	07/2005-10/2009
New Bedford Health Care Center	SNF	07/2005-10/2009
Newton Health Care Center	SNF	07/2005-10/2009
Peabody Glen Health Care Center	SNF	07/2005-10/2009
Redstone Health Care Center	SNF	07/2005-10/2009
Weymouth Health Care Center	SNF	07/2005-10/2009
Wilmington Health Care Center	SNF	07/2005-10/2009
Care Alternatives of Massachusetts	HOS	07/2005-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2005-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013- present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009
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Missouri

Care Alternatives of Missouri	HOS	07/2005-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Partners Pharmacy of Missouri	RX	07/2005-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Care One at Dunroven	SNF	07/2005-10/2009
Care One at East Brunswick	SNF	07/2005-10/2009
Care One at Evesham	SNF	07/2005-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	07/2005-10/2009
Care One at Hamilton	SNF	07/2005-10/2009
Care One at Holmdel	SNF	07/2005-10/2009
Care One at Jackson	SNF	07/2005-10/2009
Care One at King James	SNF	07/2005-10/2009
Care One at Livingston	SNF	09/2005-10/2009
Care One at Livingston	ALF	09/2005-10/2009
Care One at Madison Avenue	SNF	07/2005-10/2009
Care One at Moorestown	SNF	07/2005-10/2009
Care One at Moorestown	ALF	07/2005-10/2009
Care One at Morris	SNF	07/2005-10/2009
Care One at Morris Assisted Living	ALF	07/2005-10/2009
Care One at Pine Rest	SNF	07/2005-10/2009
Care One at Raritan Bay MC	LTA	07/2005-10/2009
Care One Harmony Village at Moorestown	SNF	07/2005-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2005-10/2009
Care One at The Highlands	SNF	07/2005-10/2009
Care One at Valley	SNF	07/2005-10/2009

Care One at Wall	SNF	07/2005-10/2009
Care One at Wayne	SNF/ALF	07/2005-10/2009
Care One at Wellington	SNF	07/2005-10/2009
Ordell Health Care Center	SNF	07/2005-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2006-10/2009
South Jersey Health Care Center	SNF	07/2005-10/2009
Woodcrest Health Care Center	SNF	07/2005-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Partners Pharmacy of New Jersey	RX	07/2005-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	07/2005-10/2009
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Ohio

Bellbrook Health Care Center	SNF	07/2005-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	10/2006-10/2009
The Rehab and Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	SNF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Senior Living at Lancaster	HOM	02/2011-present
Care Alternatives of Pennsylvania	HOS	07/2005-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	07/2005-11/2009
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Rhode Island

Chestnut Terrace Rehabilitation and Nursing	SNF	02/2014-present
Scallop Shell Nursing and Rehabilitation Center	SNF	12/2010-present

Virginia

Colonial Heights Health Care Center	SNF	07/2005-10/2009
Glenburnie Rehabilitation	SNF	07/2005-10/2009
Hopewell Health Care Center	SNF	07/2005-10/2009

**Key**

ACU - acute care/hospital	ICF - intermediate care facility/group home
ALF - assisted living facility	IRF - intermediate rehab facility
HHA - home health agency	LTA - long term acute care hospital
HOM - homecare	RX - pharmacy
HOS - hospice	SNF - skilled nursing facility/nursing home

### Individual Background Review

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners early in 2010 both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in various states other than the State of New York. Upon their separation from the companies in late 2009, relinquished their management positions and since that time they have no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at their time of acquisition of Elderwood Senior Care, and revealed no issues of character and competence.

### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Elderwood at Hamburg, Elderwood at Liverpool, Elderwood at Amherst, Elderwood at Grand Island, Elderwood at Lancaster, Elderwood at Cheektowaga, Elderwood at Williamsville, Elderwood at Waverly, Elderwood at Wheatfield, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Elderwood Village at Williamsville, Elderwood Assisted Living at Wheatfield, Elderwood Assisted Living at West Seneca, Elderwood Assisted Living at Cheektowaga, Elderwood Assisted Living at Hamburg, and Elderwood Assisted Living at Waverly for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations Elderwood Assisted Living at West Seneca, Elderwood Assisted Living at Cheektowaga, Elderwood Assisted Living at Hamburg, and Elderwood Assisted Living at Waverly (LCHSAs) for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Review of the current out of state facilities for Mr. Cole and Dr. Rubin hold current ownership interests is notified below.

A review of Chestnut Terrace Rehabilitation and Nursing, and Scallop Shell Nursing and Rehabilitation of Rhode Island for the periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements. This was information was obtained from a Rhode Island State Official, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

On or about August 16, 2013 an affiliate of the applicant (Niagara Advantage Health Plan, LLC) submitted an application to NYSDOH to establish a Managed Long Term Care Plan. This application is currently pending in the Department.

#### Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post Acute Partners Management, LLC jointly owned by Warren Cole and Jeffrey Rubin.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

#### Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement for the purchase of the operating and real estate interests of Mcauley Manor Mercycare Campus, which is summarized below:

Date:	April 6, 2015
Seller:	St. James Mercy Hospital
Purchaser:	Post Acute Partners Acquisition, LLC
Assets Acquired:	Supplies, inventory and other similar tangible property used in the operation of the Facility; furniture, furnishings, equipment and supplies, computers and office equipment; all right, title and interest of Seller in and to the items of tangible personal property owned or used in connection with the Facility; all rights, title and interest of Seller in the Real Property, together with all buildings, fixtures, structures and improvements situated thereon, books, records, documents, surveys, reports, drawings, plans, specifications, and other architectural or engineering work product related to the Real Property and Improvements; all Assumed Contracts; any trademarks, trade names, service marks used in connection with the operation of the Facility.
Excluded Assets:	All of Seller's bank accounts, cash, cash equivalents and securities; all replacement and tax escrow reserves and utility deposits of Seller; all prepaid expenses of Seller, including insurance prepayments; all accounts receivable of Seller; Seller's organizational documents, minute books and other books and records relating solely to the existence of Seller as a separate legal entity; the name "Mcauley Manor Mercycare Campus" and derivations thereof; the dialysis center located at the Owned Real Property and all assets used exclusively in the operation of the Dialysis Center and The Mercycare Addiction Treatment Center (Match) and all assets used exclusively in the operation of the Match.

Assumed Liabilities:	Liabilities associated with the Assumed Contracts and Assumed Admissions Agreements, but only to the extent such obligations and liabilities assumed by Purchaser under the Assumed Contracts and Assumed Admissions Agreements relate to the periods after the Effective Time.
Excluded Liabilities:	Seller's Accounts Payable
Purchase Price:	\$5,500,000, which includes the purchase of the operation and the real estate.
Payment of Purchase Price:	Purchaser will make a deposit of \$275,000 at the end of the Due Diligence Period and the remainder due at Closing.

The applicant's financing plan appears as follows:

Equity (proposed members)	\$102,154
Loan from 1 Bethesda Drive, LLC (3.15% interest rate, 30-year term)	\$1,079,569
Bank Loan (3.15% interest rate, 30-year term)	\$4,318,277

The applicant has submitted an 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 Seller 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 Seller of its liability and responsibility. As of June 16, 2015, the facility had an outstanding Medicaid liability of \$276,400 related to an Office of the Medicaid Inspector General prior period audit.

#### Lease Rental Agreement

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

Premises:	The site located at One Bethesda Drive, North Hornell, New York.
Lessor:	1 Bethesda Drive, LLC
Lessee:	1 Bethesda Drive Operating Company, LLC
Term:	10 years with an extension for four extension terms for five years.
Rental:	Rental shall be equal to cover any debt service of Landlord related to the Property. The annual lease payments will total \$222,687.
Provisions	The lessee shall be responsible for utilities, maintenance, insurance and real estate taxes.

The lease agreement is a non-arm's length lease arrangement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and the tenant in that there is common ownership.

#### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Provider:	Elderwood Administrative Services, LLC
Company/Facility:	1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell
Services Provided:	Assist the Company with all functions related to accounts receivable, maintenance of all billing and posting records, overall accounts receivables and resident/patient ledgers, assistance and supervision of staff performing accounts payable functions, establishment of payroll budgets, schedule coordination, managing and monitoring hours, processing hours of payroll, processing of payroll reports, prepare and submit to the Company for approval on an annual basis covering the operating of an proposed capital expenditures to be made with respect to the Company for the new fiscal year, prepare and submit unaudited monthly financial statements, prepare and submit an aged accounts receivable report from the Company, assist the Company with all functions related to bookkeeping, make recommendations regarding the recruitment,

	hiring, and retention of an adequate staff and make recommendations regarding insurance and risk management.
Term:	One year and renew automatically for successive one year period.
Compensation:	First year the annual compensation will be \$228,000. The fees will be reviewed each year and adjusted either upward or downward to assure that the compensation paid by the Company is fair and reasonable.

While Elderwood Administrative Services, LLC will be providing all of the above services, the licensed operator of the Facility will retain responsibility and control in all of the final decisions associated with the services. The Facility retains ultimate independent authority and responsibility over the following:

- Controlling and maintaining the books and records of the Center;
- Appointment or dismissal of Center management level of employees and medical staff;
- Approval of Center operating and capital budgets;
- Adoption, approval, and enforcement of Center's operating policies and procedures affecting the Center's delivery of health care services;
- Approval of Center debt necessary to finance the cost of compliance with operational or physical plant standards required by law.
- Approval of Center contracts for management or for clinical services.
- Approval of settlements of administrative proceedings or litigation to which the Center is party, and
- Disposing of assets and incurring of liabilities on behalf of the Center.

#### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in operator, summarized below:

	<u>Per Diem</u>	<u>Total</u>
<u>RHCF</u>		
Revenue:		
Medicaid Managed Care	\$190.09	\$5,987,913
Medicare Fee-For-Service	407.92	1,361,229
Medicare Managed Care	399.11	391,931
Commercial Fee-For-Service	395.50	288,715
Private Pay	311.03	862,503
Other Revenues <sup>(1)</sup>		253,410
Other Non-Operating Revenues <sup>(2)</sup>		<u>98,000</u>
Total Revenues		\$9,243,701
Expenses:		
Operating	\$214.40	\$8,431,328
Capital	<u>12.88</u>	<u>506,676</u>
Total Expenses	\$227.28	\$8,938,004
Net Income		\$305,697
Utilization (patient days)		39,326
Occupancy		96.20%
Breakeven Occupancy <sup>(3)</sup>		91.92%

#### Notes:

<sup>(1)</sup> Medicare Part B revenues.

<sup>(2)</sup> Lease payments for the dialysis center, currently operated by St. James Mercy Hospital.

<sup>(3)</sup> Includes consideration of ADHCP revenues and expenses.

<u>ADHCP</u>	<u>Total</u>
Revenues	\$528,942
Expenses	<u>119,385</u>
Net Income	\$409,557
Visits	6,134
Cost Per Visit	\$19.46

The combined budget for the nursing facility beds and ADHCP during the first year subsequent to the change in operator is as follows:

Revenues	\$9,772,643
Expenses	<u>9,057,389</u>
Net Income	\$715,254

The following is noted with respect to the submitted budget

- Expense assumptions are based on the historical experience of the facility, but takes into account some expense reductions.
- Utilization assumptions are based on the applicant's projected increase in utilization, which is explained below.
- Medicaid revenue is based on the facility's current fee-for-service payment rate adjusted for an expected increase in case mix index. The applicant has indicated that they are going to transition to a value based payment system and their revenue assumptions are based on historical experience.
- RHCF utilization by payor source during the first year is as follows:

Medicaid Managed Care	80.11%
Medicare Fee-For-Service	8.49%
Medicare Managed Care	2.50%
Commercial Fee-For-Service	1.86%
Private Pay	7.04%

The new operator is anticipating an increase in overall patient days, an increase in Medicare days and a decrease in Medicaid days as a result of the changing health care landscape, particularly in relation to long term care. Community residents in need of higher acuity, short term care, increasing sub-acute rehabilitation, will benefit from the new operator's plans to increase operational capabilities through programming and education to focus on such care. Under the new operator, the facility will provide a resource to local providers as they implement DSRIP initiatives to reduce available hospitalizations by providing high quality clinical care for residents in need of short term stays with the expectation of returning to their homes in the community.

The applicant has indicated that they have taken into account the following expense reduction during the first year after the change in operator: Salaries and wages are decreasing by \$2,186,090 due to the removal of partial year salaries associated with the closing of the Ventilator Dependent Unit program, which was discontinued July 31, 2014.

#### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the acquisition of the operating interest and the real estate interests for the RHCF is \$5,500,000. The portion allocated to the operation is \$1,100,000 and the real estate is \$4,400,000. The purchase price for the operation will be met as follows: Equity of \$20,431 via the proposed members' personal resources and an intercompany loan of \$1,079,569 from 1 Bethesda Drive, LLC at an interest rate of 3.15% for a 30-year term and amortization period. The purchase price for the real estate will be met as follows: Equity of \$81,723 via the proposed members' personal resources and a loan of \$4,318,277 at an interest rate of 3.15% for a 30-year term and amortization period. The applicant submitted a letter of interest from Capital Funding, LLC in regard to the financing.

Working capital requirements are estimated at \$1,509,564, which appears reasonable based on two months of first year expenses. The applicant will borrow \$754,782 at an interest rate of LIBOR + 2.75% (approximately 3.69% as of June 15, 2015) for a five-year term. The remaining \$754,782 will be provided via an equity contribution from the applicant members. BFA Attachment A is the personal net worth statements of the proposed members of 1 Bethesda Drive Operating Company, LLC, which indicates the availability of sufficient funds to meet the equity contribution.

BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$775,213. Assets include \$275,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, then the net asset position would be \$502,213.

The submitted budget indicates a net income of \$715,254 during the first year subsequent to the change in operator. The submitted budget appears reasonable.

The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three year transition window. For the current CON project, their revenue assumptions are based on the historical rate data of the facility, as they believe these rates will be held for a period of time going forward.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the 2013 and 2014 certified financial statements of St. James Mercy Hospital. As shown, the entity had an average negative working capital position, an average negative net asset position and average losses for the period 2013 through 2014. The applicant has indicated that the nursing home operated in a positive manner throughout the period.

BFA Attachment D, financial summaries of the proposed members' affiliated nursing homes, shows that the facilities have maintained a positive net asset position and a positive working capital position and had a positive income from operations for the period shown, with the following exceptions: Elderwood at Hamburg, Elderwood at Grand Island, Elderwood at Cheektowaga, Elderwood at Williamsville and Elderwood at Williamsville had a negative working capital position due to the short term working capital needs. The applicant indicates the 2014 loss for Grand Island was due to its involvement in a union campaign that impacted census and expenses.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

**From a financial perspective, contingent approval is recommended.**



## Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary - 2013 and 2014 certified financial statements of St. James Mercy Hospital
BFA Attachment D	Financial Summary - Other affiliated nursing homes

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 6<sup>th</sup> day of August, 2015 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 1 Bethesda Drive Operating Company, LLC as the new operator of the 112-bed facility located at 1 Bethesda Drive, North Hornell, which is currently operated as the McCauley Manor at MercyCare, 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:

151182 E

FACILITY/APPLICANT:

1 Bethesda Drive Operating Company, LLC  
d/b/a Elderwood at Hornell

APPROVAL CONTINGENT UPON:

1. Submission of a signed Medicaid access agreement to meet or exceed the Medicaid access threshold in Steuben County, and a commitment to report actual accessibility rates to NYSDOH on an annual basis. [FLHSA]
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]
3. 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]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.  
The DOH reserves the right to require continued reporting beyond the two year period.  
[RNR]
5. Submission of all consulting and services agreements between the applicant and Elderwood Administrative Services, LLC, or any other entity. [LTC]
6. Submission of an executed assignment of rights for the operating interest to 1 Bethesda Drive Operating Company, LLC, acceptable to the Department. [BFA]
7. Submission of an executed assignment of rights for the real estate interest to 1 Bethesda Drive, LLC, acceptable to the Department. [BFA]
8. Submission of an executed intercompany loan commitment, acceptable to the Department. [BFA]

9. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
10. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA]
11. Submission of an executed building lease, acceptable to the Department. [BFA]
12. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
13. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
14. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of the applicant's executed proposed Administrative Services Agreement, which is acceptable to the Department. [CSL]
18. Submission of a photocopy of the executed proposed 1 Bethesda Drive Operating Holdco, LLC's Operating Agreement, which is acceptable to the department. [CSL]
19. Submission of a photocopy of the executed proposed 1 Bethesda Drive Operating Holdco, LLC's Articles of Organization, which is acceptable to the department. [CSL]
20. Submission of a photocopy of the executed proposed 1 Bethesda Drive Operating Holdco, LLC's Application for Authority, which is acceptable to the department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151191-E**  
**West Ledge Op, LLC d/b/a Pinnacle Center for  
Rehabilitation on the Hudson**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Westchester  
**Acknowledged:** April 29, 2015

**Executive Summary**

**Description**

West Ledge Op, LLC, an existing New York limited liability company, requests approval to be established as the operator of West Ledge Rehabilitation and Nursing Center, a 100-bed Article 28 residential health care facility (RHCF) located at 2000 E Main Street, Peekskill (Westchester County). The certified bed capacity of West Ledge Rehabilitation and Nursing Center is proposed to decrease by four beds, bringing the total number of beds to 96 at the conclusion of this project. Upon approval of this application, the facility will be named Pinnacle Center for Rehabilitation on the Hudson. There will be no change in services provided.

WLOP LLC, a New York limited liability company, is the current operator of West Ledge Rehabilitation and Nursing Center. In August 2013, WLOP LLC entered into an Employment Agreement with Mark Friedman and Neal Einhorn for the purpose of employing them as co-Chief Executive Officers to assist with the operation of the facility in order to restore profitability and stability to the overall operations. On September 18, 2013, WLOP LLC entered into an Operations Transfer and Surrender Agreement (OTA) with West Ledge Op, LLC for the sale and acquisition of the operating interest of the RHCF. It is noted that Mark Friedman and Neal Einhorn had membership interest in West Ledge Op, LLC. Assignments have been provided effective April 1, 2015, documenting that Mr. Friedman and Mr. Einhorn have assigned and transferred to Devorah Friedman and Sharon Einhorn, respectively, all of their

rights, title and interests in West Ledge Op, LLC. An Amended and Restated Operating Agreement has also been provided effective April 1, 2015. West Ledge Op, LLC now seeks to exercise its rights under the OTA, whereby West Ledge Op, LLC will be the new operator of the facility upon approval by the Public Health and Health Planning Council. The Employment Agreement will terminate upon closing of the OTA.

The real estate ownership will not change as a result of this application. On September 18, 2013, WLRE LLC, a New York limited liability company, and West Ledge Op, LLC entered into a draft lease agreement whereby WLRE LLC will lease the facility to West Ledge Op, LLC for a term of twelve years. The lease term will commence after the closing of the OTA. The proposed lease is an arm's length transaction.

The current and proposed operator are as follows:

<u>Current</u>	
WLOP LLC	
<u>Members</u>	<u>%</u>
Moshe Scheiner	60%
Nathan Stein	40%

<u>Proposed</u>	
West Ledge OP, LLC	
<u>Members</u>	<u>%</u>
Devorah Friedman	42.5%
Sharon Einhorn	42.5%
Yossie Zucker	8.5%
Shaindl Shur	3.0%
Ahiva Rudner	2.0%
Steven Sax	2.0%

OPCHSM Recommendation  
Contingent Approval

Need Summary

The change in ownership will result in a change in beds as noted in the chart below:

<b>West Ledge Rehabilitation and Nursing Center</b>	<b>Current</b>	<b>Proposed Action</b>	<b>Upon Completion</b>
RHCF Beds	100	-4	96
<b>Total</b>	<b>100</b>	<b>-4</b>	<b>96</b>

West Ledge's occupancy was 94.2% in 2011, 91.4% in 2012 and 93.6% in 2013.

Program Summary

No negative information has been received concerning the character and competence of the

proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

The purchase price for the acquisition of the operating interest is the assumption of certain liabilities.

Budget:	Revenues	\$11,260,093
	Expenses	<u>11,226,748</u>
	Net Income	\$33,345

## 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. [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]
3. 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:
  - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - 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]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
5. Submission of a programmatically acceptable name for the facility. [LTC]
6. Submission and programmatic review of plans showing the proposed four bed reduction including the affected rooms and nursing unit(s). [LTC]
7. Submission of a photocopy of an executed lease agreement between WLRE, LLC and the applicant, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

# Need Analysis

## Background

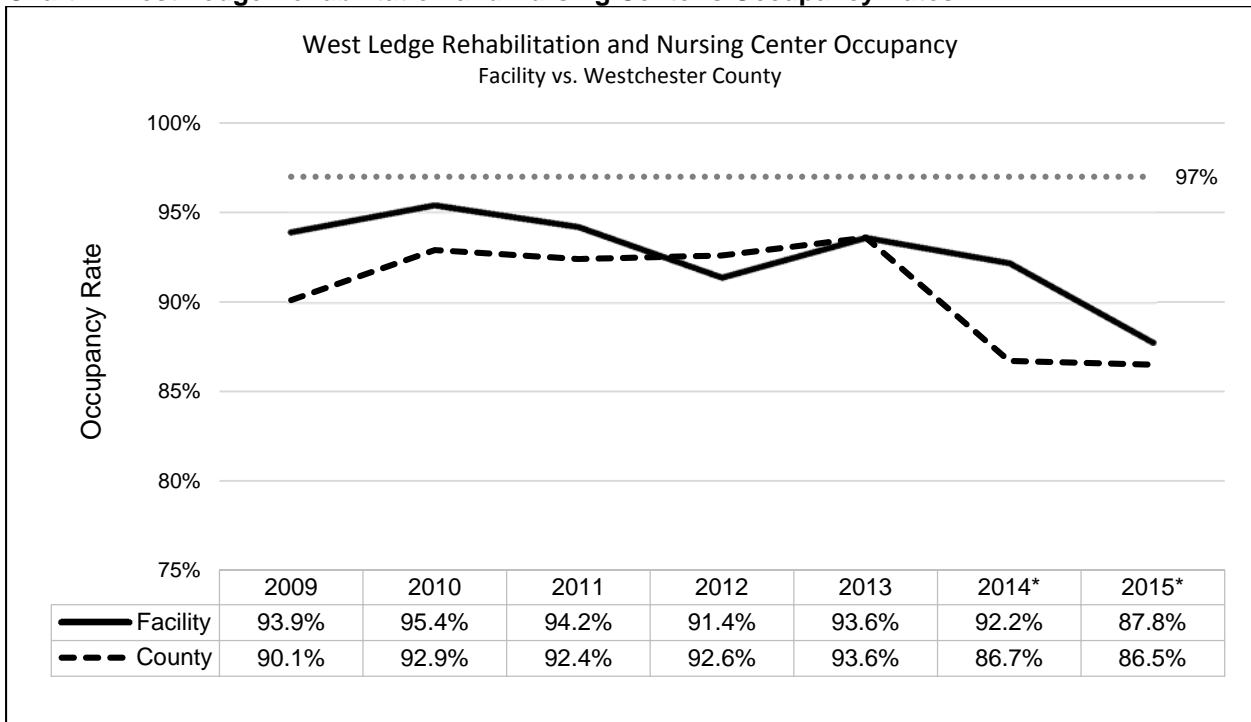
There is currently a need for 180 beds in Westchester County as indicated in Table 1 below:

**Table 1: RHCN Need – Westchester County**

<b>2016 Projected Need</b>	6,716
<b>Current Beds</b>	6,583
<b>Beds Under Construction</b>	-47
<b>Total Resources</b>	6,536
<b>Unmet Need</b>	180

The overall occupancy for Westchester County is 94.5%, as indicated in Chart 1 below:

**Chart 1: West Ledge Rehabilitation and Nursing Center’s Occupancy Rates**



*\*unaudited; based on weekly census*

West Ledge’s occupancy was 94.2% in 2011, 91.4% in 2012 and 93.6% in 2013. For 2014, and thus far in 2015, occupancy averages to approximately 92.2% and 87.8%, respectively. According to the applicant, low, historical occupancy rates are the result of a low level of professional referral sources, an absence of outreach and relationships with local hospitals, lack of a niche rehabilitation program within the facility, a marginally effective marketing team and an overall low level of community outreach. Low utilization in 2015 is attributed to renovations being done under approved AEP-6211 to create a more pleasant, home-like environment with larger areas for rehabilitation, dining and recreation. During any given week of the construction period, there have been six to eight beds unavailable to residents, which has been a significant contributing factor to the lower occupancy. Renovations are expected to be completed toward the end of 2015.



### Analysis

The change in ownership will result in a change in beds as noted in the chart below:

<b>West Ledge Rehabilitation and Nursing Center</b>	<b>Current</b>	<b>Proposed Action</b>	<b>Upon Completion</b>
RHCF Beds	100	-4	96
<b>Total</b>	<b>100</b>	<b>-4</b>	<b>96</b>

West Ledge Rehab's occupancy was 94.2% in 2011, 91.4% in 2012 and 93.6% in 2013. In addition to the 4-bed reduction shown in the preceding table, the applicant intends to increase occupancy in the following ways: promote the facility to local hospitals and physicians in the Hudson Valley and New York City planning regions, conduct community outreach, reduce unplanned discharges, expand clinical competencies, implement specialty programs for cardiac and pulmonary rehab and ramp up marketing efforts after completion of renovations currently being performed under approved AEP-6211.

### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

West Ledge Rehab's Medicaid admissions for 2012 and 2013 are 21.1% and 21.5%, respectively. This facility did not exceed Westchester County's 75% Medicaid admission threshold rates in 2012 and 2013 of 46.9% and 51.7%, respectively; the facility will be required to follow the contingency plan as noted below.

### Conclusion

The measures proposed by the prospective owners, and the four percent reduction in beds, will help restore occupancy to more optimum levels, and result in more efficient operation of the facility.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Program Description

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	West Ledge Rehabilitation and Nursing Center	Pinnacle Center for Rehabilitation on the Hudson

Address	2000 Main Street Peekskill, NY. 10566	Same
RHCF Capacity	100	96
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	WLOP, LLC  Moshe Scheiner           60% Nathan Stern               40%	West Ledge Op, LLC  Managing Members: Devorah Friedman           42.50% Sharon Einhorn               42.50%  Members: Yossie Zucker               8.00% Shaindl Shur                 3.00% Akiva Rudner                 2.00% Steven Sax                    2.00%

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

**Individual Background Review**

Devorah Friedman holds a New York State speech language pathologist license and is considered to be in good standing. She is currently employed as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests in health facilities:

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

Sharon Einhorn discloses no employment history over the last 10 years. Ms. Einhorn discloses the following ownership interests in health facilities:

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present

The Phoenix Rehabilitation and Nursing Center 01/2015 to present

Yossie Zucker is a New York State certified public accountant with license currently inactive. Mr. Zucker is the owner of CareRite Services LLC, in Lakewood, New Jersey, a financial consulting firm for nursing homes. He discloses ownership interests in the following facilities:

Ramapo Manor Center for Rehabilitation and Nursing	07/2012 to present
St. James Rehabilitation and Healthcare Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present

Shaindl Shur is the president of Comprehensive Healthcare Solutions LLC, a medical billing company located in Lakewood, New Jersey. Ms. Shur discloses ownership interests in the following facilities:

Cortlandt Healthcare	03/2014 to present
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Akiva Rudner holds New York State nursing home administrator's license and is considered to be in good standing. He currently serves as Chief Operating Officer at CareRite LLC, a nursing home consulting service. Mr. Rudner discloses ownership in the following facility:

St. James Rehabilitation & Healthcare Center	08/2012 to present
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Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Previously, Mr. Sax was the assistant administrator to the Sans Souci Rehabilitation and Nursing Center in Yonkers, New York. Steven Sax discloses the following ownership interest in health facilities:

St. James Rehabilitation and Healthcare Center	08/2012 to present
Cortlandt Healthcare	03/2014 to present

#### Character and Competence – Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Sans Souci Nursing Home for the period reveals that the facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Dumont Center for Rehabilitation and Nursing, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, The Riverside, Cortlandt Healthcare, Crown Center for Nursing and Rehabilitation, and The Phoenix Rehabilitation and Nursing Center reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Asset Transfer Agreement

The applicant has submitted an executed asset purchase agreement for the transfer of the operation, which is summarized below:

Date:	September 18, 2013
Premises:	The site located at 2000 East Main Street, Peekskill, New York.
Seller:	WLOP LLC
Purchaser:	West Ledge Op, LLC
Assets Acquired:	All inventory and supplies; all contracts, agreements, leases, purchase orders, insurance policies and other arrangements; all menus, policies and procedures manuals, operating manuals, training materials, marketing, sales and promotional materials, intellectual property including, but not limited to, patents, trademarks, service marks, copyrights and registrations and applications, trade names and secrets and/or computer software used in connection with the operation of the Facility; all rights to telephone and facsimile numbers used by the Facility; all of the rights of the Transferor in the name "West Ledge Rehabilitation and Nursing Center"; all administrative records, financial books and records, employee and payroll records, patient trust account records, computer software relating to the operation of the Facility; all patient medical records, employee and payroll records and medical/administrative libraries, the business, operation and goodwill of the Facility, except for the Excluded Assets; all petty cash at the Facility on the Closing Date; all accounts receivable relating to services rendered by the Facility on and after the Effective Date; all retroactive rate increases resulting from rate appeals; all leasehold improvements, furniture, fixtures and equipment owned or leased by Transferor; all cash in the Special Account and resident security deposits and prepayments.
Excluded Assets:	Cash (other than petty cash) as of the Effective Date, and any cash in the General Account as of the Closing Date; licenses and permits that are not assignable or transferable, whether with or without third party consent to New Operator; marketable securities owned by Transferor as of the Effective Date; any grant awarded by a governmental entity to Transferor relating solely to the operation of the Facility prior to the Effective Date; funds from all retroactive rate increases prior to the Effective Date and all accounts receivable and other rights to payment from third parties.
Assumed Liabilities:	All liabilities of Transferor relating to the use, ownership and operation of the Facility on and after the Effective Date.
Excluded Liabilities:	Taxes, account and trade payables.
Purchase Price:	Assumption of certain liabilities.

The applicant has submitted an 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. Currently, the facility has no outstanding Medicaid liabilities and assessments.

### Lease Rental Agreement

The applicant has submitted a proposed lease rental agreement, which is summarized below:

Date:	September 18, 2013
Premises:	The site located at 2000 Main Street, Peekskill, New York
Lessor:	WLRE, LLC

Lessee:	West Ledge Op, LLC
Term:	12 years commence after the closing of the OTA
Rental:	\$525,000 annually (\$43,750 per month in equal monthly installments)
Provisions:	Lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The proposed lease is an arm's length transaction.

#### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, as summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$251.17	\$6,767,401
Medicare Fee-For-Service	\$576.31	2,781,866
Commercial Fee-For-Service	\$365.54	442,665
Private Pay	\$406.95	677,170
Other		<u>590,991</u>
Total Revenues		\$11,260,093
Expenses:		
Operating	\$303.28	\$10,495,205
Capital	<u>20.77</u>	<u>731,543</u>
Total Expenses	\$324.05	\$11,226,748
Net Income		\$33,345
Utilization (patient days)		34,645
Occupancy		98.87%
Breakeven Occupancy		94.73%

The following is noted with respect to the submitted budget:

- The Medicaid rate is based on the facility's January 2015 Medicaid Fee-For-Service (FFS) rate, which serves as the benchmark rate for Medicaid Managed Care payments.
- Other revenues consists of Medicare Part A (\$196,860), Medicaid add on (\$368,030) on and vending machine revenues (\$26,101).
- Expense assumptions are based on the historical experience of the facility.
- Utilization broken down by payor source during the first year after the change in operator is as follows:

Medicaid Managed Care	77.77%
Medicare Fee for Service	13.93%
Commercial Fee for Service	3.60%
Private Pay	4.70%
- The applicant is projecting to increase utilization due to working closely with local health care and social work providers, including hospital, adult care facilities and assisted living programs, and leveraging its existing community relationship and doing aggressive outreach efforts. The applicant has developed a marketing business plan to increase utilization. Medicaid utilization is projected to decrease and Medicare and Commercial is projected to increase due to the planned implementation of the applicant's marketing and operational plan, which focuses on increasing referral sources, utilization of community outreach efforts, enhanced marketing, the reduction of unplanned discharges, and the implementation of specialty programs within the facility.

#### Capability and Feasibility

The purchase price for the acquisition of the operating interests is the assumption of certain liabilities.

Working capital requirements are estimated at \$1,871,124, which appears reasonable based on two months of first year expenses. The applicant will meet the working capital requirement via acquired accounts receivable and equity contribution from the proposed members of West Ledge Op, LLC.

BFA Attachment A is the personal net worth statements of West Ledge Op, LLC's members, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment C is the pro-forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$292,324. Assets includes \$49,499 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, total net assets would be \$242,825.

The submitted budget indicates a net income of \$33,345 during the first year subsequent to the change in operator. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper", provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is the financial summary of West Ledge Rehabilitation from 2011 through 2014. As shown, the entity had an average negative working capital position and an average negative net asset position. The applicant indicated that the reason for the negative working capital and the negative net asset position in 2012 was the result of historical losses. The entity incurred average net losses of \$124,779 from 2011 through 2014. The applicant indicated that the reason for the losses in 2012 and 2014 was the result of decreased utilization. To improve operations, the current operator hired Mark Friedman and Neal Einhorn in August 2013 as co-Chief Executive Officers to help restore profitability, and responded to concerns from local community representatives who advised that renovations were needed to make the facility more homelike and attractive to prospective residents. Renovations are currently underway. The applicant has noted that during this ongoing construction period certain beds are not available for occupancy. Overall utilization is expected to improve upon completion of the renovations.

BFA Attachment D presents a financial summary of the nursing homes the members of West Ledge OP, LLC currently have ownership interest in. As shown, the facilities have maintained a positive net asset position and had positive income from operations for the periods shown, with the exception of The Grand Pavilion for Rehab & Nursing at Rockville which incurred a slight loss in 2014. Financial statements for Cortlandt Healthcare are not available as the facility was newly acquired in March 2014. Financial statements for Crown Center for Nursing and Rehabilitation and The Phoenix Rehabilitation & Nursing Center are also not available as membership was not established until January 2015.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary - West Ledge Rehabilitation and Nursing Center
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary - Other skilled nursing facilities
BFA Attachment E	Ownership interests of other nursing homes

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 6<sup>th</sup> day of August, 2015 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 West Ledge OP, LLC as the new operator of a 96-bed facility located at 2000 Main Street, Peekskill which is currently operated as West Ledge Rehabilitation and Nursing Center. Four RHCf beds will be decertified to achieve a 96-bed facility, 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:

151191 E

FACILITY/APPLICANT:

West Ledge OP, LLC d/b/a Pinnacle Center for  
Rehabilitation on the Hudson

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department. [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]
3. 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:
  - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - 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]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
5. Submission of a programmatically acceptable name for the facility. [LTC]
6. Submission and programmatic review of plans showing the proposed four bed reduction including the affected rooms and nursing unit(s). [LTC]
7. Submission of a photocopy of an executed lease agreement between WLRE, LLC and the applicant, which is acceptable to the Department. [CSL]



APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151118-E  
Willcare**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Orange  
**Acknowledged:** March 17, 2015

**Executive Summary**

**Description**

National Health Industries, Inc., an existing Kentucky corporation and wholly owned subsidiary of Almost Family, Inc., requests approval to become the new controlling entity of Bracor, Inc. via a stock purchase agreement. Bracor, Inc. d/b/a Willcare operates two certified home health agencies (CHHA) in New York through their wholly owned subsidiaries, Western Region Health Corporation and Litson Certified Care, Inc. This certificate of need (CON) application is specifically for the transfer of ownership of Litson Certified Care, Inc., which is located at 700 Corporate Boulevard, Newburgh (Orange County), New York. CON #151119 is being processed concurrently for the transfer of Western Region Health Corporation under the same stock purchase agreement. BFA Attachment A presents the organizational chart before and after the proposed change.

Almost Family, Inc. is a Delaware corporation publically traded on the NASDAQ Global Select market under the symbol AFAM. Per the applicant, Bracor, Inc. and all subsidiaries and affiliates will continue to provide services and operations will remain the same. All policies and procedures, staffing, and referral relationships will continue uninterrupted. BFA Attachment B presents the share ownership before and after the proposed transaction.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This project is an operator change and is not expected to have an impact on services provided by the facility or the utilization of those services.

**Program Summary**

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Almost Family, Inc., and National Health Industries, Inc., to adversely affect their positions on the boards or as officers. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

**Financial Summary**

The total purchase price of \$50,900,000 will be met through \$10,000,000 in equity and the remaining \$40,900,000 will be financed through a 5-year, \$175 million revolving credit facility, bearing interest at a rate of LIBOR + 1.75%. The allocation of the purchase price by companies owned by Bracor, Inc. is as shown below:

Litson Health Care, Inc.	\$10,698,702
Willcare, Inc.	8,783,842
Western Region Health Corporation	8,225,936
Litson Certified Care, Inc.	22,191,520
Non-New York Entities	<u>1,000,000</u>
<b>Total</b>	<b>\$50,900,000</b>

There are no project costs associated with this application.

## 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 copy of the executed stock transfer certificate, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the amended bylaws of Litson Certified Care, Inc., acceptable to the Department. (CSL)

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Need Summary

This project is an operator change and is not expected to have an impact on services provided by the facility or the utilization of those services.

### Recommendation

Because this project proposes only a change of operator, the Bureau of Public Need Review has no recommendation regarding this proposal.

## Program Analysis

### Review Summary

Litson Certified Care, Inc. d/b/a Willcare, a proprietary business corporation, is an Article 36 Certified Home Health Agency (CHHA) serving the general population in Greene, Orange, Ulster, and Westchester Counties, and serving the developmentally disabled population in Dutchess, Putnam, and Sullivan Counties, and an Article 36 Long Term Home Health Care Program (LTHHCP) serving Ulster County. The sole parent corporation and 100% stockholder of Litson Certified Care, Inc. d/b/a Willcare is Western Region Health Corporation d/b/a Willcare, a proprietary business corporation and Article 36 Certified Home Health Agency (CHHA) serving Allegany, Chautauqua, and Erie Counties, and an Article 36 Long Term Home Health Care Program (LTHHCP) serving Allegany County. The sole parent corporation and 100% stockholder of Western Region Health Corporation d/b/a Willcare is Bracor, Inc., a proprietary business corporation. Bracor, Inc. is also the sole parent corporation and 100% stockholder of Willcare Inc. d/b/a Willcare, a proprietary business corporation and Article 36 Licensed Home Care Services Agency (LHCSA) serving the Western Region of New York State. Willcare, Inc. d/b/a Willcare is in turn the sole parent corporation and 100% stockholder of Litson Health Care, Inc. d/b/a Willcare, a proprietary business corporation and Article 36 Licensed Home Care Services Agency (LHCSA) serving the Lower Hudson Valley of New York State. Bracor, Inc. and the above corporate structure has received previous State Hospital Review and Planning Council and Public Health Council approval.

The current proposal seeks approval for National Health Industries, Inc., a proprietary business corporation, to become the new parent corporation and new 100% sole stockholder of Bracor, Inc. Since the parent corporation and 100% sole stockholder of National Health Industries, Inc. is Almost Family, Inc., a publicly-traded proprietary business corporation, this proposal also seeks approval for Almost Family, Inc. to become the new grandparent corporation and ultimate controlling entity and stockholder of Bracor, Inc.

This CHHA/LTHHCP CON application # 151118-E applies only to the Litson Certified Care, Inc. d/b/a Willcare CHHA and LTHHCP serving counties in the Lower Hudson Valley. CHHA/LTHHCP CON application # 151119-E has also been submitted to apply only to the Western Regional Health Corporation d/b/a Willcare CHHA and LTHHCP serving counties in Western New York. In addition, LHCSA application # 2616-L has been submitted to apply only to the Litson Health Care, Inc. d/b/a Willcare LHCSA serving the Lower Hudson Valley, and LHCSA application # 2617-L has been submitted to apply only to the Willcare, Inc. d/b/a Willcare LHCSA serving Western New York. All four applications are being presented together for this Public Health and Health Planning Council meeting agenda.

The direct corporate operator of the CHHA and LTHHCP serving the Lower Hudson Valley will remain Litson Certified Care, Inc. d/b/a Willcare. This CHHA will remain general population for Greene, Orange, Ulster, and Westchester Counties, and special needs only (developmentally disabled) population for Dutchess, Putnam, and Sullivan Counties. The direct corporate operator of the LHCSA serving the Lower Hudson Valley will remain Litson Health Care, Inc. d/b/a Willcare. The direct corporate operator of the CHHA and LTHHCP serving Western New York will remain Western Region Health Corporation d/b/a Willcare. The direct corporate operator of the LHCSA serving Western New York will remain Willcare, Inc. d/b/a Willcare. The parent corporation of Litson Certified Care, Inc. d/b/a Willcare will remain

Western Region Health Corporation d/b/a Willcare. The parent corporation of Litson Health Care, Inc. d/b/a Willcare will remain Willcare, Inc. d/b/a Willcare. The parent corporation of both Western Region Health Corporation d/b/a Willcare and Willcare, Inc. d/b/a Willcare (and therefore the grandparent corporation of both Litson Certified Care, Inc. d/b/a Willcare and Litson Health Care, Inc. d/b/a Willcare) will remain Bracor, Inc., as was already previously approved by both the State Hospital Review and Planning Council and the Public Health Council. However, the new incoming great-grandparent corporation and controlling entity will now be National Health Industries, Inc., and the new incoming great-great-grandparent corporation and ultimate controlling entity will now be Almost Family, Inc. (**see Programmatic Attachment A – Before and After Organizational Charts**)

National Health Industries, Inc., a proprietary business corporation formed in Kentucky, is a wholly owned subsidiary of Almost Family, Inc., a publicly-traded proprietary business corporation formed in Delaware. Almost Family, Inc. owns 100% of the stock of National Health Industries, Inc. Almost Family, Inc. is authorized to issue 25,000,000 shares of common stock and 2,000,000 shares of preferred stock. Of the 25,000,000 shares of common stock, Almost Family, Inc. currently has 9,480,331 shares issued and outstanding, 94,000 shares held as treasury shares, and 15,425,669 shares unissued. Of the 2,000,000 shares of preferred stock, Almost Family, Inc. currently has no shares issued and outstanding, or held as treasury shares. All 2,000,000 shares of preferred stock are currently unissued. The 9,480,331 shares of issued and outstanding common stock are currently held by 281 shareholders of record and approximately 1,500 additional shareholders owning stock through brokerage firms. The stockholders of Almost Family, Inc. are a diverse group of owners including individuals, private investment funds, and mutual funds. Shares of Almost Family, Inc. held by each fund are for the benefit of the fund's investors. Each fund's percentage of ownership in the corporation will vary from time to time. Both mutual funds and private investment funds are required by the Securities and Exchange Commission (SEC) to disclose direct or indirect stock ownership of greater than 5% of a publicly traded corporation's outstanding stock. The applicant confirms that for SEC reporting purposes, two families of funds, FMR, LLC (Fidelity), and North Tide Capital, LLC, have filed disclosures with the SEC indicating they each possesses dispositive authority for greater than 10% of the outstanding shares of Almost Family, Inc. stock. Almost Family, Inc. has reviewed the relationship these two Limited Liability Company (LLC) family of funds have with the Almost Family, Inc. corporation, and has determined that, although each LLC family of funds is a greater than 10% owner of the corporation's stock, neither has any day-to-day role in the management activities of the corporation, neither has designated representation on the Board of Directors of the corporation, and neither has any control or input into any of the health care operations within the Almost Family, Inc. corporate structure. Pursuant to Delaware law, all affairs of Almost Family, Inc. are managed by, or under the direction of, the corporation's Board of Directors, elected annually by shareholder vote. The make-up of the current Board of Directors has remained unchanged since 2004, and the appointed Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer have all remained constant since 2002. In addition, anti-takeover provisions in the corporation's By-Laws, including advance notice requirements for Board of Directors nominations and any shareholder proposals, would discourage any one shareholder from assuming control of the corporation and any of its operations. Therefore, the applicant has determined that for this proposal, the governing body of Almost Family, Inc. has 100% control of National Health Industries, Inc., and no other individuals or legal entities will have any authority or operating control to influence any of the health care operations included in the Almost Family, Inc. corporate structure. In addition, both FMR, LLC and North Tide Capital, LLC have submitted signed statements that, despite owning 10% or more of the publicly traded stock of Almost Family, Inc., neither has a representative on, nor controls any member of, the Board of Directors of Almost Family, Inc., and neither has or would have the ability to exercise any control over, or to direct, or cause the directions of, the actions, management, or policies of Almost Family, Inc., or of the individual health care operations and providers that fall under the corporate jurisdiction of Almost Family, Inc.

Almost Family, Inc. operates over 170 home health care providers in over 245 separate practice locations in 14 states. The complete list of the affiliated home health care providers and their practice locations, by state, has been included in the application and a copy is attached (**see Programmatic Attachment B – Almost Family Providers / Facilities**). All providers listed are therefore affiliated with each board member, and each officer, named below. Other than FMR, LLC (Fidelity) and North Tide Capital, LLC, the two families of investment funds as noted above, there are no other stockholders owning 10% or more of the publicly traded stock of Almost Family, Inc.

The governing body of Almost Family, Inc. consists of the following members of the Board of Directors:

<p><b>William B. Yarmuth, Chairperson</b> Chairman and Chief Executive Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Henry M. Altman, Jr., CPA (KY)</b> Owner / Financial Consultant, Altman Consulting, LLC (Financial Consulting) Affiliations: Jewish Home and Healthcare Services, Louisville, KY (Hospitals System)</p>
<p><b>Steven B. Bing</b> Executive Director, Kentucky Public Health Association and Kentucky Local Health Department Association (Health Care Provider Advocacy Associations)</p>	<p><b>Donald G. McClinton</b> Retired since 2002 Affiliations: Jewish Home and Healthcare Services, Louisville, KY (Hospitals System)</p>
<p><b>Tyree G. Wilburn</b> Co-Founder and Managing Partner, The Yearling Funds (Early Stage Venture Capital Funds) Affiliations: Merit Health Systems, Louisville, KY (Owner/Operator of Hospitals System)</p>	<p><b>Jonathan D. Goldberg, Esq. (KY)</b> Managing Partner, Goldberg and Simpson, PLLC (Law Firm)</p>
<p><b>Walter Earl Reed, III, CPA (KY)</b> President / Chief Executive Officer – Springstone, LLC (Psychiatric Hospitals) Affiliations: Springstone, LLC, Louisville, KY (Owner/Operator of Psychiatric Hospitals); LifeCare Management Services, Plano, Texas (Long Term Care Hospitals)</p>	

Additional officers of Almost Family, Inc., are as follows:

<p><b>William B. Yarmuth, Chief Executive Officer</b> (Disclosed above)</p>	<p><b>Cletus Steven Guenther, President and Principal Financial Officer</b> President and Principal Financial Officer – Almost Family, Inc. and National Health Industries, Inc.</p>
<p><b>Patrick Todd Lyles, Senior Vice President</b> Senior Vice President for Administration, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Daniel J. Schwartz, Senior Vice President</b> Senior Vice President and Chief Operating Officer, Almost Family, Inc. and National Health Industries, Inc.</p>
<p><b>Rajneesh Kaushal, Senior Vice President</b> Senior Vice President and Chief Clinical Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Dana S. Case, CPA (KY, AL), Vice President</b> Vice President for Internal Audit, Almost Family, Inc.</p>
<p><b>Denis B. Fleming, Jr., Esq. (KY), Vice President</b> Vice President for Government Relations, Almost Family, Inc.</p>	<p><b>Catherine Pedigo, Vice President</b> Vice President for Reimbursement, Almost Family, Inc. and National Health Industries, Inc.</p>
<p><b>Jeffrey T. Reibel, CPA (KY), Vice President</b> Vice President for Finance and Chief Accounting Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Mark F. Sutton, Vice President</b> Vice President for Human Resources, Almost Family, Inc.</p>

The governing bodies of both National Health Industries, Inc. and of Bracor, Inc., following the proposed transaction, will be identical and consist of the following members of the Board of Directors:

<b>William B. Yarmuth, Chairperson</b> (Disclosed above)	<b>Cletus Steven Guenther</b> (Disclosed above)
<b>Patrick Todd Lyles</b> (Disclosed above)	

Additional officers of both National Health Industries, Inc. and of Bracor, Inc., following the proposed transaction, will also be identical, as follows:

<b>William B. Yarmuth, Chief Executive Officer</b> (Disclosed above)	<b>Cletus Steven Guenther, President and Principal Financial Officer</b> (Disclosed above)
<b>Patrick Todd Lyles, Senior Vice President</b> (Disclosed above)	<b>Daniel J. Schwartz, Senior Vice President</b> (Disclosed above)
<b>Rajneesh Kaushal, Senior Vice President</b> (Disclosed above)	<b>Catherine Pedigo, Vice President</b> (Disclosed above)
<b>Jeffrey T. Reibel, Vice President</b> (Disclosed above)	

A search of all of the above named board members, employers, and affiliations revealed no matches on either the NYS Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The Bar Association of the State of Kentucky reports that the attorneys listed above are licensed in good standing with no disciplinary actions taken. In addition, the Kentucky Board of Accountancy, and the Alabama State Board of Public Accountancy, indicate there are no current issues with the licensure of the Certified Public Accountants listed above. The Kentucky Board of Accountancy does report that upon renewing his CPA license in 2014, Jeffrey T. Reibel had failed to complete the required hours of continuing education credits. He was allowed to renew his license, but was required to complete the required continuing education credit hours within 90 days, required to pay a civil penalty in the amount of \$500 within 30 days, and required to be subject to a continuing education audit review upon his next licensure renewal in 2016.

The applicant has provided the attached list of legal actions taken against Almost Family, Inc. (**see Programmatic Attachment C – Almost Family Legal Actions**). The applicant has also provided the attached list of enforcement actions taken, and monetary penalties imposed, against the home health care providers included in the Almost Family, Inc. corporate structure. (**see Programmatic Attachment D – Almost Family Home Health Care Providers Enforcement Actions**)

The NYSDOH Division of Home and Community Based Services reviewed the compliance histories of the affiliated Willcare certified home health agencies (CHHAs), long term home health care programs (LTHHCPs), and licensed home care services agencies (LHCSAs) located in New York State, for the time period 2008 to 2015.

An enforcement action was taken in 2013 against Western Region Health Corporation d/b/a Willcare based on a November 2012 survey, citing violations: in Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; Policies and Procedures of Service Delivery; and Personnel. This action was resolved with a \$5,500 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

To date, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers included in the Almost Family, Inc. corporate structure, as listed on Programmatic Attachment B: Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, and Tennessee. In addition, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers listed as affiliations of individual board members and/or officers of Almost Family, Inc.: Arizona, Colorado, Florida, Illinois, Indiana, Louisiana, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. Out-of state enforcement actions that were reported by the states are as follows:

Florida reported that Caretenders Visiting Services of Gainesville, LLC d/b/a Mederi Caretenders in Gainesville, had an administrative fine imposed in October 2014 due to an initial application deficiency, with no further information provided by the state. However, the applicant has provided an extensive list of Florida enforcement actions in Programmatic Attachment D that provides further details regarding each of the citations and dollar fines imposed.

Georgia reported that SunCrest Home Health of Georgia, Inc. d/b/a SunCrest Home Health, a home health agency in Riverdale, was fine \$450 in January 2015 for violations of state home health agency regulations that were cited in September, 2014. This action was also included in Programmatic Attachment D by the applicant.

Texas reported that Springstone, LLC's Mesa Springs, a psychiatric hospital in Fort Worth (individual board member affiliation) was assessed an administrative penalty of \$5,000 in December, 2014, with no further information provided by the state.

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Almost Family, Inc., and National Health Industries, Inc., to adversely affect their positions on the boards or as officers. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

**From a programmatic perspective, approval is recommended.**



## Financial Analysis

### Stock Purchase Agreement

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

Date:	February 24, 2015
Seller:	Bracor, Inc. d/b/a Willcare
Purchaser:	National Health Industries, Inc.
Acquired Assets:	All shares owned by such Seller which includes 100% ownership in Litson Health Care, Inc., Willcare, Inc., Western Region Health Corporation, and Litson Certified Care, Inc.
Assumed Liabilities:	Assuming all liabilities. The purchase price shall be reduced by the amount of any outstanding and unpaid liabilities as of the Effective Date.
Purchase Price:	\$50,900,000 (Company Enterprise Value). Contract states that price can be adjusted based on Estimated Balance Sheet (Preliminary Purchase Price) and then also the Final Balance Sheet (Final Purchase Price). Estimated purchase price for Litson Certified Care, Inc. is \$22,191,520.
Payment:	\$ 6,290,000 paid into escrow 44,610,000 due at closing (not including above adjustments) \$50,900,000

The applicant's financing plan appears as follows:

Equity	\$10,000,000
Revolving Credit Facility (5-year \$175 million revolving credit facility at LIBOR plus 1.75% to 3.00% depending on agreed upon leverage formula)	\$40,900,000

BFA Attachment B is a Stock Ownership Table of the current and post Stock Purchase Agreement corporate structure.

### Operating Budget

There are no operational expenses associated with the proposed transaction. Transaction expenses are estimated at \$1,500,000.

### Capability and Feasibility

There are no project costs associated with this application.

The total purchase price of \$50,900,000 will be met as follows: Equity of \$10,000,000 from the applicant's resources, and the remaining \$40,900,000 will be provided through a 5-year, \$175 million revolving credit facility, bearing interest at a rate of LIBOR + 1.75% to 3.00%. BFA Attachment C is the 2013-2014 financial summary of Almost Family, Inc. and Subsidiaries, which reveals sufficient resources to meet the equity requirement.

As previously mentioned, this is a stock transfer in which Bracor, Inc. will continue providing services at present operational levels with no change in operational revenues or expenses due to the transaction. BFA Attachment D provides the 2012-2014 financial summaries of Bracor, Inc. and Litson Certified Care, Inc. The following is noted:

- Bracor, Inc. had an average negative working capital position and an average net deficit from 2012 through 2014. The applicant has indicated that the reason for the average negative working capital position is due to the increase in debt to fund new acquisitions. The reason for the average net deficit from 2012 through 2014 is due to the Equity partner taking a management fee from the company, and in 2013 the accounting standards for goodwill changed resulting in a non-cash expense of approximately \$3.7 million per year.

Subject to the noted contingencies, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

<h2>Attachments</h2>
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BFA Attachment A	Organizational Chart
BFA Attachment B	Share Ownership – Before and After Stock Purchase Agreement
BFA Attachment C	2013-2014 Almost Family, Inc. and Subsidiaries Financial Summary
BFA Attachment D	2012-2014 Bracor Inc. and Litson Certified Care, Inc. Financial Summaries
Programmatic Attachment A	Willcare Before and After Organizational Charts
Programmatic Attachment B	Almost Family Providers / Facilities
Programmatic Attachment C	Almost Family Legal Matters
Programmatic Attachment D	Almost Family Home Health Care Providers Enforcement Actions

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of August, 2015, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish National Health Industries, Inc. and Almost Family, Inc. as controlling persons at the grandparent and great grandparent levels of Litson Certified Care, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

151118 E

Willcare

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the executed stock transfer certificate, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the amended bylaws of Litson Certified Care, Inc., acceptable to the Department. (CSL)

APPROVAL CONDITIONED UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151119-E  
Willcare**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Erie  
**Acknowledged:** March 17, 2015

**Executive Summary**

**Description**

National Health Industries, Inc., an existing Kentucky corporation and wholly owned subsidiary of Almost Family, Inc., requests approval to become the new controlling entity of Bracor, Inc. via a stock purchase agreement. Bracor, Inc. d/b/a Willcare operates two certified home health agencies (CHHA) in New York through their wholly owned subsidiaries, Western Region Health Corporation and Litson Certified Care, Inc. This certificate of need (CON) application is specifically for the transfer of ownership of Western Region Health Corporation, which is located at 346 Delaware Avenue, Buffalo (Erie County). CON #151118 is being processed concurrently for the transfer of Litson Certified Care, Inc. under the same stock purchase agreement. BFA Attachment A presents the organizational chart before and after the proposed change.

Almost Family, Inc. is a Delaware corporation publically traded on the NASDAQ Global Select market under the symbol AFAM. Per the applicant, Bracor, Inc. and all subsidiaries and affiliates will continue to provide services and operations will remain the same. All policies and procedures, staffing, and referral relationships will continue uninterrupted. BFA Attachment B presents the share ownership before and after the proposed transaction.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This project is an operator change and is not expected to have an impact on services provided by the facility or the utilization of those services.

**Program Summary**

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Almost Family, Inc., and National Health Industries, Inc., to adversely affect their positions on the boards or as officers. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

**Financial Summary**

The total purchase price of \$50,900,000 will be met through \$10,000,000 in equity and the remaining \$40,900,000 will be financed through a 5-year, \$175 million revolving credit facility, bearing interest at a rate of LIBOR + 1.75%. The allocation of the purchase price by companies owned by Bracor, Inc. is as shown below:

Litson Health Care, Inc.	\$10,698,702
Willcare, Inc.	8,783,842
Western Region Health Corporation	8,225,936
Litson Certified Care, Inc.	22,191,520
Non-New York Entities	<u>1,000,000</u>
<b>Total</b>	<b>\$50,900,000</b>

There are no project costs associated with this application.

## 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 copy of the executed stock transfer certificate, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicants amended bylaws, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Need Summary

This project is an operator change and is not expected to have an impact on services provided by the facility or the utilization of those services.

### Recommendation

Because this project proposes only a change of operator, the Bureau of Public Need Review has no recommendation regarding this proposal.

## Program Analysis

### Review Summary

Litson Certified Care, Inc. d/b/a Willcare, a proprietary business corporation, is an Article 36 Certified Home Health Agency (CHHA) serving the general population in Greene, Orange, Ulster, and Westchester Counties, and serving the developmentally disabled population in Dutchess, Putnam, and Sullivan Counties, and an Article 36 Long Term Home Health Care Program (LTHHCP) serving Ulster County. The sole parent corporation and 100% stockholder of Litson Certified Care, Inc. d/b/a Willcare is Western Region Health Corporation d/b/a Willcare, a proprietary business corporation and Article 36 Certified Home Health Agency (CHHA) serving Allegany, Chautauqua, and Erie Counties, and an Article 36 Long Term Home Health Care Program (LTHHCP) serving Allegany County. The sole parent corporation and 100% stockholder of Western Region Health Corporation d/b/a Willcare is Bracor, Inc., a proprietary business corporation. Bracor, Inc. is also the sole parent corporation and 100% stockholder of Willcare, Inc. d/b/a Willcare, a proprietary business corporation and Article 36 Licensed Home Care Services Agency (LHCSA) serving the Western Region of New York State. Willcare, Inc. d/b/a Willcare is in turn the sole parent corporation and 100% stockholder of Litson Health Care, Inc., d/b/a Willcare, a proprietary business corporation and Article 36 Licensed Home Care Services Agency (LHCSA) serving the Lower Hudson Valley of New York State. Bracor, Inc. and the above corporate structure has received previous State Hospital Review and Planning Council and Public Health Council approval.

The current proposal seeks approval for National Health Industries, Inc., a proprietary business corporation, to become the new parent corporation and new 100% sole stockholder of Bracor, Inc. Since the parent corporation and 100% sole stockholder of National Health Industries, Inc. is Almost Family, Inc., a publicly-traded proprietary business corporation, this proposal also seeks approval for Almost Family, Inc. to become the new grandparent corporation and ultimate controlling entity and stockholder of Bracor, Inc.

This CHHA/LTHHCP CON application # 151119-E applies only to the Western Region Health Corporation, Inc. d/b/a Willcare CHHA and LTHHCP serving counties in Western New York. CHHA/LTHHCP CON application # 151118-E has also been submitted to apply only to the Litson Certified Care, Inc. d/b/a Willcare CHHA and LTHHCP serving counties in the Lower Hudson Valley. In addition, LHCSA application # 2616-L has been submitted to apply only to the Litson Health Care, Inc. d/b/a Willcare LHCSA serving the Lower Hudson Valley, and LHCSA application # 2617-L has been submitted to apply only to the Willcare, Inc. d/b/a Willcare LHCSA serving Western New York. All four applications are being presented together for this Public Health and Health Planning Council meeting agenda.

The direct corporate operator of the CHHA and LTHHCP serving the Lower Hudson Valley will remain Litson Certified Care, Inc. d/b/a Willcare. This CHHA will remain general population for Greene, Orange, Ulster, and Westchester Counties, and special needs only (developmentally disabled) population for Dutchess, Putnam, and Sullivan Counties. The direct corporate operator of the LHCSA serving the Lower Hudson Valley will remain Litson Health Care, Inc. d/b/a Willcare. The direct corporate operator of the CHHA and LTHHCP serving Western New York will remain Western Region Health Corporation d/b/a Willcare. The direct corporate operator of the LHCSA serving Western New York will remain Willcare,

Inc. d/b/a Willcare. The parent corporation of Litson Certified Care, Inc. d/b/a Willcare will remain Western Region Health Corporation d/b/a Willcare. The parent corporation of Litson Health Care, Inc. d/b/a Willcare will remain Willcare, Inc. d/b/a Willcare. The parent corporation of both Western Region Health Corporation d/b/a Willcare and Willcare, Inc. d/b/a Willcare (and therefore the grandparent corporation of both Litson Certified Care, Inc. d/b/a Willcare and Litson Health Care, Inc. d/b/a Willcare) will remain Bracor, Inc., as was already previously approved by both the State Hospital Review and Planning Council and the Public Health Council. However, the new incoming great-grandparent corporation and controlling entity will now be National Health Industries, Inc., and the new incoming great-great-grandparent corporation and ultimate controlling entity will now be Almost Family, Inc. (**see Programmatic Attachment A – Before and After Organizational Charts**)

National Health Industries, Inc., a proprietary business corporation formed in Kentucky, is a wholly owned subsidiary of Almost Family, Inc., a publicly-traded proprietary business corporation formed in Delaware. Almost Family, Inc. owns 100% of the stock of National Health Industries, Inc. Almost Family, Inc. is authorized to issue 25,000,000 shares of common stock and 2,000,000 shares of preferred stock. Of the 25,000,000 shares of common stock, Almost Family, Inc. currently has 9,480,331 shares issued and outstanding, 94,000 shares held as treasury shares, and 15,425,669 shares unissued. Of the 2,000,000 shares of preferred stock, Almost Family, Inc. currently has no shares issued and outstanding, or held as treasury shares. All 2,000,000 shares of preferred stock are currently unissued. The 9,480,331 shares of issued and outstanding common stock are currently held by 281 shareholders of record and approximately 1,500 additional shareholders owning stock through brokerage firms. The stockholders of Almost Family, Inc. are a diverse group of owners including individuals, private investment funds, and mutual funds. Shares of Almost Family, Inc. held by each fund are for the benefit of the fund's investors. Each fund's percentage of ownership in the corporation will vary from time to time. Both mutual funds and private investment funds are required by the Securities and Exchange Commission (SEC) to disclose direct or indirect stock ownership of greater than 5% of a publicly traded corporation's outstanding stock. The applicant confirms that for SEC reporting purposes, two families of funds, FMR, LLC (Fidelity), and North Tide Capital, LLC, have filed disclosures with the SEC indicating they each possesses dispositive authority for greater than 10% of the outstanding shares of Almost Family, Inc. stock. Almost Family, Inc. has reviewed the relationship these two Limited Liability Company (LLC) family of funds have with the Almost Family, Inc. corporation, and has determined that, although each LLC family of funds is a greater than 10% owner of the corporation's stock, neither has any day-to-day role in the management activities of the corporation, neither has designated representation on the Board of Directors of the corporation, and neither has any control or input into any of the health care operations within the Almost Family, Inc. corporate structure. Pursuant to Delaware law, all affairs of Almost Family, Inc. are managed by, or under the direction of, the corporation's Board of Directors, elected annually by shareholder vote. The make-up of the current Board of Directors has remained unchanged since 2004, and the appointed Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer have all remained constant since 2002. In addition, anti-takeover provisions in the corporation's By-Laws, including advance notice requirements for Board of Directors nominations and any shareholder proposals, would discourage any one shareholder from assuming control of the corporation and any of its operations. Therefore, the applicant has determined that for this proposal, the governing body of Almost Family, Inc. has 100% control of National Health Industries, Inc., and no other individuals or legal entities will have any authority or operating control to influence any of the health care operations included in the Almost Family, Inc. corporate structure. In addition, both FMR, LLC and North Tide Capital, LLC have submitted signed statements that, despite owning 10% or more of the publicly traded stock of Almost Family, Inc., neither has a representative on, nor controls any member of, the Board of Directors of Almost Family, Inc., and neither has or would have the ability to exercise any control over, or to direct, or cause the directions of, the actions, management, or policies of Almost Family, Inc., or of the individual health care operations and providers that fall under the corporate jurisdiction of Almost Family, Inc.

Almost Family, Inc. operates over 170 home health care providers in over 245 separate practice locations in 14 states. The complete list of the affiliated home health care providers and their practice locations, by state, has been included in the application and a copy is attached (**see Programmatic Attachment B – Almost Family Providers / Facilities**). All providers listed are therefore affiliated with each board member, and each officer, named below. Other than FMR, LLC (Fidelity) and North Tide Capital, LLC, the two families of investment funds as noted above, there are no other stockholders owning 10% or more of the publicly traded stock of Almost Family, Inc.



The governing body of Almost Family, Inc. consists of the following members of the Board of Directors:

<p><b>William B. Yarmuth, Chairperson</b> Chairman and Chief Executive Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Henry M. Altman, Jr., CPA (KY)</b> Owner / Financial Consultant, Altman Consulting, LLC (Financial Consulting) Affiliations: Jewish Home and Healthcare Services, Louisville, KY (Hospitals System)</p>
<p><b>Steven B. Bing</b> Executive Director, Kentucky Public Health Association and Kentucky Local Health Department Association (Health Care Provider Advocacy Associations)</p>	<p><b>Donald G. McClinton</b> Retired since 2002 Affiliations: Jewish Home and Healthcare Services, Louisville, KY (Hospitals System)</p>
<p><b>Tyree G. Wilburn</b> Co-Founder and Managing Partner, The Yearling Funds (Early Stage Venture Capital Funds) Affiliations: Merit Health Systems, Louisville, KY (Owner/Operator of Hospitals System)</p>	<p><b>Jonathan D. Goldberg, Esq. (KY)</b> Managing Partner, Goldberg and Simpson, PLLC (Law Firm)</p>
<p><b>Walter Earl Reed, III, CPA (KY)</b> President / Chief Executive Officer – Springstone, LLC (Psychiatric Hospitals) Affiliations: Springstone, LLC, Louisville, KY (Owner/Operator of Psychiatric Hospitals); LifeCare Management Services, Plano, Texas (Long Term Care Hospitals)</p>	

Additional officers of Almost Family, Inc., are as follows:

<p><b>William B. Yarmuth, Chief Executive Officer</b> (Disclosed above)</p>	<p><b>Cletus Steven Guenther, President and Principal Financial Officer</b> President and Principal Financial Officer – Almost Family, Inc. and National Health Industries, Inc.</p>
<p><b>Patrick Todd Lyles, Senior Vice President</b> Senior Vice President for Administration, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Daniel J. Schwartz, Senior Vice President</b> Senior Vice President and Chief Operating Officer, Almost Family, Inc. and National Health Industries, Inc.</p>
<p><b>Rajneesh Kaushal, Senior Vice President</b> Senior Vice President and Chief Clinical Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Dana S. Case, CPA (KY, AL), Vice President</b> Vice President for Internal Audit, Almost Family, Inc.</p>
<p><b>Denis B. Fleming, Jr., Esq. (KY), Vice President</b> Vice President for Government Relations, Almost Family, Inc.</p>	<p><b>Catherine Pedigo, Vice President</b> Vice President for Reimbursement, Almost Family, Inc. and National Health Industries, Inc.</p>
<p><b>Jeffrey T. Reibel, CPA (KY), Vice President</b> Vice President for Finance and Chief Accounting Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p><b>Mark F. Sutton, Vice President</b> Vice President for Human Resources, Almost Family, Inc.</p>

The governing bodies of both National Health Industries, Inc. and of Bracor, Inc., following the proposed transaction, will be identical and consist of the following members of the Board of Directors:

<b>William B. Yarmuth, Chairperson</b> (Disclosed above)	<b>Cletus Steven Guenther</b> (Disclosed above)
<b>Patrick Todd Lyles</b> (Disclosed above)	

Additional officers of both National Health Industries, Inc. and of Bracor, Inc., following the proposed transaction, will also be identical, as follows:

<b>William B. Yarmuth, Chief Executive Officer</b> (Disclosed above)	<b>Cletus Steven Guenther, President and Principal Financial Officer</b> (Disclosed above)
<b>Patrick Todd Lyles, Senior Vice President</b> (Disclosed above)	<b>Daniel J. Schwartz, Senior Vice President</b> (Disclosed above)
<b>Rajneesh Kaushal, Senior Vice President</b> (Disclosed above)	<b>Catherine Pedigo, Vice President</b> (Disclosed above)
<b>Jeffrey T. Reibel, Vice President</b> (Disclosed above)	

A search of all of the above named board members, employers, and affiliations revealed no matches on either the NYS Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The Bar Association of the State of Kentucky reports that the attorneys listed above are licensed in good standing with no disciplinary actions taken. In addition, the Kentucky Board of Accountancy, and the Alabama State Board of Public Accountancy, indicate there are no current issues with the licensure of the Certified Public Accountants listed above. The Kentucky Board of Accountancy does report that upon renewing his CPA license in 2014, Jeffrey T. Reibel had failed to complete the required hours of continuing education credits. He was allowed to renew his license, but was required to complete the required continuing education credit hours within 90 days, required to pay a civil penalty in the amount of \$500 within 30 days, and required to be subject to a continuing education audit review upon his next licensure renewal in 2016.

The applicant has provided the attached list of legal actions taken against Almost Family, Inc. (**see Programmatic Attachment C – Almost Family Legal Actions**). The applicant has also provided the attached list of enforcement actions taken, and monetary penalties imposed, against the home health care providers included in the Almost Family, Inc. corporate structure. (**see Programmatic Attachment D – Almost Family Home Health Care Providers Enforcement Actions**)

The NYSDOH Division of Home and Community Based Services reviewed the compliance histories of the affiliated Willcare certified home health agencies (CHHAs), long term home health care programs (LTHHCPs), and licensed home care services agencies (LHCSAs) located in New York State, for the time period 2008 to 2015.

An enforcement action was taken in 2013 against Western Region Health Corporation d/b/a Willcare based on a November 2012 survey, citing violations: in Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; Policies and Procedures of Service Delivery; and Personnel. This action was resolved with a \$5,500 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

To date, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers included in the Almost Family, Inc. corporate structure, as listed on Programmatic Attachment B: Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, and Tennessee. In addition, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers listed as affiliations of individual board members and/or officers of Almost Family, Inc.: Arizona, Colorado, Florida, Illinois, Indiana, Louisiana, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. Out-of state enforcement actions that were reported by the states are as follows:

Florida reported that Caretenders Visiting Services of Gainesville, LLC d/b/a Mederi Caretenders in Gainesville, had an administrative fine imposed in October 2014 due to an initial application deficiency, with no further information provided by the state. However, the applicant has provided an extensive list of Florida enforcement actions in Programmatic Attachment D that provides further details regarding each of the citations and dollar fines imposed.

Georgia reported that SunCrest Home Health of Georgia, Inc. d/b/a SunCrest Home Health, a home health agency in Riverdale, was fine \$450 in January 2015 for violations of state home health agency regulations that were cited in September, 2014. This action was also included in Programmatic Attachment D by the applicant.

Texas reported that Springstone, LLC's Mesa Springs, a psychiatric hospital in Fort Worth (individual board member affiliation) was assessed an administrative penalty of \$5,000 in December, 2014, with no further information provided by the state.

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Almost Family, Inc., and National Health Industries, Inc., to adversely affect their positions on the boards or as officers. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Stock Purchase Agreement

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

Date:	February 24, 2015
Seller:	Bracor, Inc. d/b/a Willcare
Purchaser:	National Health Industries, Inc.
Acquired Assets:	All shares owned by such Seller which includes 100% ownership in Litson Health Care, Inc., Willcare, Inc., Western Region Health Corporation, and Litson Certified Care, Inc.
Assumed Liabilities:	Assuming all liabilities. The purchase price shall be reduced by the amount of any outstanding and unpaid liabilities as of the Effective Date.
Purchase Price:	\$50,900,000 (Company Enterprise Value). Contract states that price can be adjusted based on Estimated Balance Sheet (Preliminary Purchase Price) and then also the Final Balance Sheet (Final Purchase Price). Estimated purchase price Western Region Health Corporation is \$8,225,936.
Payment:	\$ 6,290,000 paid into escrow 44,610,000 due at closing (not including above adjustments) \$50,900,000

The applicant's financing plan appears as follows:

Equity	\$10,000,000
Revolving Credit Facility (5-year \$175 million revolving credit facility at LIBOR plus 1.75% to 3.00% depending on agreed upon leverage formula)	\$40,900,000

BFA Attachment B is a Stock Ownership Table of the current and post Stock Purchase Agreement corporate structure.

### Operating Budget

There are no operational expenses associated with the proposed transaction. Transaction expenses are estimated at \$1,500,000.

### Capability and Feasibility

There are no project costs associated with this application.

The total purchase price of \$50,900,000 will be met as follows: Equity of \$10,000,000 from the applicant's resources, and the remaining \$40,900,000 will be provided through a 5-year, \$175 million revolving credit facility, bearing interest at a rate of LIBOR + 1.75% to 3.00%. BFA Attachment C is the 2013-2014 financial summary of Almost Family, Inc. and Subsidiaries, which reveals sufficient resources to meet the equity requirement.

As previously mentioned, this is a stock transfer in which Bracor, Inc. will continue providing services at present operational levels with no change in operational revenues or expenses due to the transaction. BFA Attachment D provides the 2012-2014 financial summaries of Bracor, Inc. and Western Region Health Corporation. The following is noted:

- Bracor, Inc. had an average negative working capital position and an average net deficit from 2012 through 2014. The applicant has indicated that the reason for the average negative working capital position is due to the increase in debt to fund new acquisitions. The reason for the average net deficit from 2012 through 2014 is due to the Equity partner taking a management fee from the company, and in 2013 the accounting standards for goodwill changed resulting in a non-cash expense of approximately \$3.7 million per year.

Subject to the noted contingencies, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Share Ownership – Before and After Stock Purchase Agreement
BFA Attachment C	2013-2014 Almost Family, Inc. and Subsidiaries Financial Summary.
BFA Attachment D	2012-2014 Bracor Inc. and Litson Certified Care, Inc. Financial Summaries
Programmatic Attachment A	Willcare Before and After Organizational Charts
Programmatic Attachment B	Almost Family Providers / Facilities
Programmatic Attachment C	Almost Family Legal Matters
Programmatic Attachment D	Almost Family Home Health Care Providers Enforcement Actions

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of August, 2015, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish National Health Industries, Inc. and Almost Family, Inc. as controlling persons at the grandparent and great grandparent levels of Western Regional Health Corporation, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

151119 E

Willcare

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the executed stock transfer certificate, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicants amended bylaws, acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151205-E  
Peconic Bay Medical Center**

**Program: Hospital  
Purpose: Establishment**

**County: Suffolk  
Acknowledged: May 7, 2015**

**Executive Summary**

**Description**

Central Suffolk Hospital d/b/a Peconic Bay Medical Center (PBMC), a 140-bed, voluntary not-for-profit, Article 28 hospital located at 1300 Roanoke Avenue, Riverhead (Suffolk County), requests approval for the disestablishment of Peconic Health Corporation d/b/a East End Health Alliance (EEHA) as its active parent and co-operator. EEHA currently serves as the sole member and parent holding company of Southampton Hospital, Eastern Long Island Hospital and Central Suffolk Hospital. Certificate of Need (CON) applications have also been submitted to disestablish EEHA as the active parent of Southampton Hospital (CON #151221) and Eastern Long Island Hospital (CON #151247). These two applications are being processed concurrent with this CON request.

There are no costs associated with this project and there are no changes to staffing resulting from approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or the number of beds for those services as a result of the proposed change in governance structure.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

There will be no change in staff, beds or services, and no costs associated with this project. As such, there is no anticipated change in service utilization for this project.

**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 costs associated with this application.

<b>Budget:</b>	
Revenues	\$152,795,277
Expenses	<u>149,634,383</u>
Net Income	\$3,160,894



## 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, should PBMC elect to maintain involvement with EEHA as an administrative service provider. [HSP]
2. Submission of a photocopy of the applicant's by-laws, acceptable to the Department. [CSL]
3. A photocopy of the Certificate of Amendment of the Certificate of Incorporation of East End Health Alliance, acceptable to the Department. [CSL]
4. A photocopy of the Bylaws of East End Health Alliance, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Project Description

Central Suffolk Hospital (Peconic Bay Medical Center) seeks approval for the disestablishment of Peconic Health Corporation, also known as East End Health Alliance, as the active parent and co-operator of Central Suffolk Hospital located at 1300 Roanoke Avenue, Riverhead, N.Y. 11901 Suffolk County.

### Background

Central Suffolk Hospital's bed chart and historical utilization numbers are provided below for reference. This project is not expected to have an effect on beds or services at the Hospital.

Central Suffolk Hospital	Current Beds	2010	2011	2012	2013	2014*
Med/Surg	132	58.4%	62.2%	60.4%	56.5%	54.6%
Obstetric	8	63.1%	58.4%	51.7%	55.1%	57.8%
Total	140	60.0%	63.7%	61.3%	57.5%	55.9%
Grand Total**	140	62.4%	66.0%	63.6%	59.9%	58.2%

\*Data may be incomplete

\*\*Data may include prisoner data

### Conclusion

EEHA plans to subsequently join a major health system that can provide the necessary scale, clinical and administrative support it needs to be viable facility.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Central Suffolk Hospital (CSH) d/b/a Peconic Bay Medical Center (PBMC), located at 1300 Roanoke Avenue in Riverhead (Suffolk County), requests approval of the disestablishment of Peconic Health Corporation (PHC), also known as East End Health Alliance (EEHA), as its active parent and co-operator. EEHA may continue as an administrative service provider, though not as an active parent of any health care facility.

PHC serves as the sole member and parent holding company of CSH (as well as Eastern Long Island Hospital and Southampton Hospital). Participating members of EEHA have decided that after six years of operation, and given the highly volatile healthcare environment, it is time to disestablish EEHA as the Hospital's corporate parent (a necessary precursor to subsequent affiliations with another health system). PBMC plans to subsequently join a different health system that they hope can provide the necessary scale of operations and clinical and administrative support to ensure the continuation of its mission and viability as a full service hospital.

Central Suffolk Hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. There are no anticipated changes in the Hospital's Board, costs associated with this project or changes in staffing.

### 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.

### 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.

### Recommendation

**From a programmatic perspective, contingent is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the disestablishment of EEHA, which is summarized below:

Inpatient Revenues:	
Medicaid	\$8,269,635
Medicare	44,403,767
Private Pay/Other	<u>32,232,882</u>
Total Inpatient	\$84,906,284

Outpatient Revenues:	
Medicaid	\$10,167,977
Medicare	37,848,065
Private Pay/Other	<u>12,073,107</u>
Total Outpatient	\$60,089,149

Other Revenue	\$7,799,844
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Total Revenue	\$152,795,277
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Expenses:	
Operating	\$140,126,237
Capital	<u>9,508,146</u>
Total	\$149,634,383

Net Income	\$3,160,894
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Utilization:	
Inpatient (discharges)	7,014
Outpatient (visits)	98,209

Utilization broken down by payor source during the first year for inpatient and outpatient services is as follows:

<u>Inpatient</u>		<u>Outpatient</u>	
Medicare Fee-For-Service	43.3%	Medicare Fee-For-Service	49.6%
Medicare Managed Care	11.9%	Medicare Managed Care	4.4%
Medicaid Fee-For-Service	4.7%	Medicaid Fee-For-Service	3.6%
Medicaid Managed Care	14.6%	Medicaid Managed Care	11.0%
Private Pay/Other	25.5%	Private Pay/Other	31.4%

The following is noted with respect to the submitted budget:

- Utilization assumptions are based on the hospital's 2014 inpatient and outpatient levels which are expected to continue going forward.
- Expense assumptions are based on 2014 levels, as no incremental expenses are anticipated as a result of this application.

#### Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$3,160,894 during the first year after the disestablishment of the EEHA. Budget assumptions are based on the historical experience of the hospital. The applicant has indicated that the hospital has not received financial assistance from EEHA.

BFA Attachment A is a summary of the 2012 through 2014 certified financial statements of Central Suffolk Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position for the period. Also, the facility achieved an average income from operations of \$2,724,184 from 2012 through 2014.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A 2012 - 2014 Financial Summary of Central Suffolk Hospital

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 6<sup>th</sup> day of August, 2015 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 disestablish Peconic Health Corporation d/b/a East End Health Alliance as active parent and co-operator of Peconic Bay Medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151205 E

Peconic Bay Medical Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department, should PBMC elect to maintain involvement with EEHA as an administrative service provider. [HSP]
2. Submission of a photocopy of the applicant's by-laws, acceptable to the Department. [CSL]
3. A photocopy of the Certificate of Amendment of the Certificate of Incorporation of East End Health Alliance, acceptable to the Department. [CSL]
4. A photocopy of the Bylaws of East End Health Alliance, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151217-E

North Shore-Long Island Jewish Health Care, Inc.

**Program:** Hospital  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** May 14, 2015

## Executive Summary

### Description

North Shore-Long Island Jewish Health Care, Inc., a not-for-profit corporation whose sole corporate member is North Shore-Long Island Jewish Health System, Inc., requests approval to become the active parent and co-operator of Central Suffolk Hospital a/k/a/ Peconic Bay, inclusive of its licensed entities, Peconic Bay Medical Center (PBMC), Peconic Bay Skilled Nursing Facility (PBSNF), and Peconic Bay Homehealth Services (PBHS). PBMC is a 140-bed, voluntary not-for-profit, Article 28 hospital located at 1300 Roanoke Avenue, Riverhead (Suffolk County); PBSNF is a 60-bed residential health care facility, located at the same site, and PBHS is a certified home health agency serving Suffolk County. Peconic Bay's current active parent and co-operator is Peconic Health Corporation d/b/a East End Health Alliance (EEHA). Concurrently, Peconic Bay is seeking to disestablish EEHA as its active parent and co-operator via CON #151205.

Peconic Bay serves eastern Long Island and controls, in addition to the above licensed entities, Peconic Bay Medical Center Foundation and Peconic Bay Management Corporation. North Shore-Long Island Jewish Health Care, Inc. is a comprehensive, integrated health care delivery system comprised of numerous acute care hospitals in the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long term care, and hospice services. North Shore-Long Island Jewish Health Care, Inc. and

Peconic Bay desire to enter into this transaction for the purpose of supporting their common vision to:

- improve the wellness of the communities they serve;
- deliver value to patients, payors, and employers;
- increase operational efficiencies;
- support long-term financial security; and
- advance clinical best practices, efficient governance, and stewardship of community assets.

Upon approval of this application, North Shore-Long Island Jewish Health Care, Inc. will be the sole member of Peconic Bay.

There will be no change in authorized services or the number or type of beds as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of as a direct result of this project. Peconic Bay will remain a separate not-for-profit corporation licensed under Article 28 and Article 36 of the Public Health Law, maintaining its separate operating certificates following completion of the project. Peconic Bay will not be a part of the North Shore-Long Island Jewish Obligated Group.

As active parent and co-operator, North Shore-Long Island Jewish Health Care, Inc. will have the rights, powers and authorities with respect to Peconic Bay to:

- Elect and remove management level employees and medical staff, and the Directors of the Corporation;
- Approve operating and capital budgets and strategic and operating plans;
- Approve operating policies and procedures, CON applications, quality improvement and patient safety plans, and contracts for management or for clinical services;
- Approve settlements of administrative proceedings or litigation to which Peconic Bay is party; and
- Appoint additional members to the Board of Directors not to exceed 30% of the number of seated members.

BFA Attachment A is the organizational chart of North Shore Long Island Health Systems post-closing.

#### OPCHSM Recommendation Contingent Approval

##### Need Summary

This transaction involves no changes in beds, services or utilization for the affected facilities and home health agency.

##### Program Summary

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

##### Financial Summary

There are no project costs associated with this application.



## 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 photocopy of the bylaws for Central Suffolk Hospital d/b/a Peconic Bay Medical Center, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Completion of CON 151205 prior to completion of this project. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Background

This transaction proposes no changes in beds, services or utilization for the affected hospital, nursing home and home health agency.

### Conclusion

The goal of this merger is to improve community wellness, deliver better value, increase operational effectiveness, and improve future sustainability.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

North Shore-Long Island Jewish Health Care, Inc., a not-for-profit corporation whose sole corporate member is North Shore-Long Island Jewish Health System, Inc., requests approval to become the active parent and co-operator of Central Suffolk Hospital a/k/a/ Peconic Bay, inclusive of its licensed entities, Peconic Bay Medical Center (PBMC), Peconic Bay Skilled Nursing Facility (PBSNF), and Peconic Bay Homehealth Services (PBHS). PBMC is a 140-bed, voluntary not-for-profit, Article 28 hospital located at 1300 Roanoke Avenue, Riverhead (Suffolk County); PBSNF is a 60-bed residential health care facility, located at the same site, and PBHS is a certified home health agency serving Suffolk County. North Shore-Long Island Jewish Health Care, Inc., whose sole corporate member is North Shore-Long Island Jewish Health System, Inc., is a comprehensive, integrated health care delivery system comprised of 19 hospitals across the New York metropolitan area as well as physician practices and providers of subacute care including home care, long term care, and hospice services.

Peconic Bay seeks to join North Shore-Long Island Jewish Health Care, Inc. Together, they will work to build an integrated delivery system with the goal of providing high quality, lower cost health care to improve the wellness of the communities served. There will be no change in either authorized services or the number or type of beds as a result of this proposed change in governance structure.

### Character and Competence

The sole corporate member of North Shore-Long Island Jewish Health Care, Inc. is North Shore-Long Island Jewish Health System, Inc. (NSLIJHS).

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.

Upon review of the 131 member Board of Trustees of NSLIJHS, the following disclosures were made:

Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

### 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.

In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

#### Conclusion

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

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

There are no projected changes in the utilization, revenues or expenses of Peconic Bay as a direct result of this project.

#### Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs or budgets associated with this application.

BFA Attachment B is the financial summary of the 2013 and 2014 certified financial statements of North Shore Long Island Health Systems, Inc. As shown, the health system had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the health system achieved an average operating income of \$85,735,000 from 2013 through 2014.

BFA Attachment C is the financial summary of the 2012 through 2014 certified financial statements of Central Suffolk Hospital. As shown, the corporation had an average positive working capital position and an average positive net asset position from 2012 through 2014. Also, the corporation achieved an average income from operations of \$2,724,184 from 2012 through 2014.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

#### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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BFA Attachment A	Organizational Chart
BFA Attachment B	2013-2014 North Shore Long Island Jewish Health Systems, Inc. Financial Summary
BFA Attachment C	2012-2014 Central Suffolk Hospital Financial Summary.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6<sup>th</sup> day of August, 2015 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 North Shore LIJ Healthcare, Inc. as the active parent/co-operator of Peconic Bay Medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151217 E

North Shore LIJ Healthcare, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the bylaws for Central Suffolk Hospital d/b/a Peconic Bay Medical Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Completion of CON 151205 prior to completion of this project. [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 # 151221-E  
Southampton Hospital**

**Program: Hospital  
Purpose: Establishment**

**County: Suffolk  
Acknowledged: May 15, 2015**

**Executive Summary**

**Description**

Southampton Hospital, a 125-bed, voluntary not-for-profit, Article 28 hospital located at 240 Meeting House Lane, Southampton (Suffolk County), requests approval for the disestablishment of Peconic Health Corporation d/b/a East End Health Alliance (EEHA) as its active parent and co-operator. EEHA currently serves as the sole member and parent holding company of Southampton Hospital, Eastern Long Island Hospital and Central Suffolk Hospital. The participating members of EEHA have decided that given the highly volatile healthcare environment, it is time to disestablish EEHA as their corporate parent, which is a necessary precursor to any subsequent affiliation with another health system. Southampton Hospital plans to subsequently join a different health care system, a transaction which will be subject to a separate and subsequent Certificate of Need (CON) application. It is noted that CON applications have also been submitted to disestablish EEHA as the active parent of Central Suffolk Hospital (CON #151205) and Eastern Long Island Hospital (CON #151247). These two applications are being processed concurrently with this CON request.

There are no costs associated with this project and there are no changes to staffing resulting from approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public

Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or the number of beds at the facility as a result of the proposed change in governance structure.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**  
Southampton Hospital, a 125-bed hospital located at 240 Meeting House Lane, Southampton, Suffolk County, is seeking CON approval to disestablish Peconic Health Corporation as its active parent. No changes in services or beds are being proposed.

**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 costs associated with this application.

<b>Budget:</b>	
Revenues	\$150,182,328
Expenses	<u>145,105,418</u>
Net Income	\$5,076,910

## 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, should Southampton elect to maintain involvement with EEHA as an administrative service provider. [HSP]
2. Submission of a photocopy of the applicants filing receipt with the New York Secretary of State for the Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's by-laws, acceptable to the Department. [CSL]
5. A photocopy of the Certificate of Amendment of the Certificate of Incorporation of East End Health Alliance, acceptable to the Department. [CSL]
6. A photocopy of the Bylaws of East End Health Alliance, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Background

Southampton Hospital's bed chart and historical utilization numbers are provided below for reference. This project is not expected to have an effect on beds or services at the Hospital.

Service Category	Current Beds	2010	2011	2012	2013	2014
Med/Surg	103	44.4%	43.4%	43.5%	41.5%	41.2%
Pediatric	3	11.5%	9.9%	10.8%	10.7%	9.1%
Obstetric	19	28.9%	26.1%	24.7%	26.2%	27.3%
<b>Total</b>	<b>125</b>	<b>45.7%</b>	<b>43.9%</b>	<b>43.8%</b>	<b>42.8%</b>	<b>43.4%</b>

### Conclusion

This project is not expected to have an impact on services provided by the facility or the utilization of those services. This disestablishment project will allow the Hospital the flexibility to pursue affiliation with another health care system.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Southampton Hospital, located at 240 Meeting House Lane, Southampton (Suffolk County), requests approval of the disestablishment of Peconic Health Corporation (PHC), also known as East End Health Alliance (EEHA), as its active parent and co-operator. EEHA may continue as a service provider, although not as an active parent of any health care facility.

PHC serves as the sole member and parent holding company of Southampton (as well as Eastern Long Island Hospital and Central Suffolk Hospital d/b/a Peconic Bay Medical Center). Participating members of EEHA have decided that after six years of operation, and given the highly volatile healthcare environment, it is time to disestablish EEHA as the Hospital's corporate parent (a necessary precursor to subsequent affiliations with another health system). Southampton plans to subsequently join a different health system that they hope can provide the necessary scale of operations, and clinical and administrative support to ensure the continuation of its mission and viability as a full service hospital.

Southampton Hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. There are no anticipated changes in the Hospital's Board, costs associated with this project or changes in staffing.

### 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.

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.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

**Financial Analysis**

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the disestablishment of EEHA, which is summarized below:

	<u>Year One</u>
Inpatient Revenues:	
Medicaid	\$6,765,320
Medicare	35,252,455
Private Pay/Other	<u>23,526,481</u>
Total Inpatient	\$65,544,256
Outpatient Revenues:	
Medicaid	\$4,212,321
Medicare	22,230,903
Private Pay/Other	<u>47,478,418</u>
Total Outpatient	\$73,921,642
Other Revenue	\$10,716,430
Total Revenue	\$150,182,328
Expenses:	
Operating	\$134,035,805
Capital	<u>11,069,613</u>
Total	\$145,105,418
Net Income	\$5,076,910
Utilization:	
Inpatient (discharges)	5,892
Outpatient (visits)	284,071

Utilization broken down by payor source during the first year for inpatient and outpatient services is as follows:

<u>Inpatient</u>		<u>Outpatient</u>	
Medicare Fee-For-Service	41.1%	Medicare Fee-For-Service	37.0%
Medicare Managed Care	4.0%	Medicare Managed Care	2.7%
Medicaid Fee-For-Service	3.9%	Medicaid Fee-For-Service	1.4%
Medicaid Managed Care	15.7%	Medicaid Managed Care	8.9%
Private Pay/Other	35.3%	Private Pay/Other	50.0%

The following is noted with respect to the submitted budget:

- Utilization assumptions are based on the hospital's 2014 inpatient and outpatient levels which are expected to continue going forward.
- Expense assumptions are based on 2014 levels, as no incremental expenses are anticipated as a result of this application.

#### Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$5,076,910 during the first year after the disestablishment of the EEHA. Budget assumptions are based on the historical experience of the hospital. The applicant has indicated that the hospital has not received financial assistance from EEHA.

BFA Attachment A is a summary of the 2012 through 2014 certified financial statements of Southampton Hospital. As shown, the hospital had an average positive working capital position, an average positive net asset position, and an average positive net income for the period.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A 2012 - 2014 Financial Summary of Southampton Hospital

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 6<sup>th</sup> day of August, 2015 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 disestablish Peconic Health Corporation d/b/a East End Health Alliance as the active parent and co-operator of Southampton Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151221 E

Southampton Hospital

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department, should Southampton elect to maintain involvement with EEHA as an administrative service provider. [HSP]
2. Submission of a photocopy of the applicants filing receipt with the New York Secretary of State for the Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's by-laws, acceptable to the Department. [CSL]
5. A photocopy of the Certificate of Amendment of the Certificate of Incorporation of East End Health Alliance, acceptable to the Department. [CSL]
6. A photocopy of the Bylaws of East End Health Alliance, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151247-E  
Eastern Long Island Hospital**

**Program: Hospital  
Purpose: Establishment**

**County: Suffolk  
Acknowledged: May 29, 2015**

**Executive Summary**

**Description**

Eastern Long Island Hospital, a 90-bed, voluntary not-for-profit, Article 28 hospital located 201 Manor Place, Greenport (Suffolk County), requests approval for the disestablishment of Peconic Health Corporation d/b/a East End Health Alliance (EEHA) as its active parent and co-operator. EEHA currently serves as the sole member and parent holding company of Eastern Long Island Hospital, Southampton Hospital and Central Suffolk Hospital. Disestablishment of EEHA as their corporate parent is a necessary precursor to any subsequent affiliation with a major health system. Eastern Long Island Hospital plans to subsequently join another health care system, a transaction which will be subject to a separate and subsequent Certificate of Need (CON) application. CON applications have also been submitted to disestablish EEHA as the active parent of Central Suffolk Hospital (CON #151205) and Southampton Hospital (CON #151221). These two applications are being processed concurrent with this CON request.

There are no costs associated with this project and there are no changes to staffing resulting from approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or the number of beds for those services as a result of the proposed change in governance structure.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

There will be no change in staff, beds or services, and no costs associated with this project. As such, there is no anticipated change in service utilization for this project.

**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 costs associated with this application.

**Budget:**

Revenues	\$48,168,061
Expenses	<u>48,029,843</u>
Excess of Revenues over Expenses	\$138,218

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.



## 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, should ELIH elect to maintain involvement with EEHA as an administrative service provider. [HSP]
2. Submission of a photocopy of the applicant's Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's filing receipt with the New York Secretary of State for the Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's by-laws, acceptable to the Department. [CSL]
5. A photocopy of the Certificate of Amendment of the Certificate of Incorporation of East End Health Alliance, acceptable to the Department. [CSL]
6. A photocopy of the Bylaws of East End Health Alliance, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Background

Eastern Long Island Hospital's bed chart and historical utilization numbers are provided below for reference. This project is not expected to have an effect on beds or services at the Hospital.

Eastern Long Island Hospital	Current Beds	2010	2011	2012	2013	2014*
Med/Surg	37	93.8%	88.7%	80.2%	79.4%	77.9%
General Psychiatric	23	64.3%	56.3%	58.1%	57.1%	57.7%
Chemical Dependence	30	23.5%	26.0%	30.6%	27.9%	27.4%
<b>Total</b>	<b>90</b>	<b>62.8%</b>	<b>59.6%</b>	<b>58.0%</b>	<b>56.6%</b>	<b>55.9%</b>

\*Data may be incomplete

### Conclusion

ELIH plans to subsequently join another health system that it hopes can provide the necessary scale, clinical and administrative support it needs to be a viable facility.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Eastern Long Island Hospital (ELIH), located at 201 Manor Place, Greenport (Suffolk County), requests approval of the disestablishment of Peconic Health Corporation (PHC), also known as East End Health Alliance (EEHA), as its active parent and co-operator.

PHC serves as the sole member and parent holding company of ELIH (as well as Southampton Hospital and Central Suffolk Hospital d/b/a Peconic Bay Medical Center). Participating members of EEHA have decided that after six years of operation, and given the highly volatile healthcare environment, it is time to disestablish EEHA as the Hospital's corporate parent (a necessary precursor to subsequent affiliations with major health system). ELIH plans to subsequently join a major health system that it hopes can provide the necessary scale of operations, and clinical and administrative support to ensure the continuation of its mission and viability as a full service hospital.

Eastern Long Island Hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. There are no anticipated changes in the Hospital's Board, costs associated with this project or changes in staffing.

### 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.

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the disestablishment of EEHA, which is summarized below:

	<u>Year One</u>
<u>Inpatient Revenues:</u>	
Medicaid	12,249,286
Medicare	6,627,269
Private Pay/Other	4,441,992
Total Inpatient	\$23,318,547
<u>Outpatient Revenues:</u>	
Medicaid	6,816,916
Medicare	7,516,714
Private Pay/Other	4,428,363
Total Outpatient	\$18,761,993
Other Revenue	6,087,521
Total Revenue	\$48,168,061
<u>Expenses:</u>	
Operating	44,867,685
Capital	3,162,158
Total	\$48,029,843
Net Income	\$138,218
<u>Utilization:</u>	
Inpatient (discharges)	18,279
Outpatient (visits)	41,190

Utilization broken down by payor source during the first year for inpatient and outpatient services is as follows:

<u>Inpatient</u>		<u>Outpatient</u>	
Medicare Fee-For-Service	26.1%	Medicare Fee-For-Service	36.4%
Medicare Managed Care	2.3%	Medicare Managed Care	3.7%
Medicaid Fee-For-Service	13.6%	Medicaid Fee-For-Service	31.2%
Medicaid Managed Care	38.9%	Medicaid Managed Care	5.1%
Private Pay/Other	19.1%	Private Pay/Other	23.6%

The following is noted with respect to the submitted budget:

- Utilization assumptions are based on the hospital's 2014 inpatient and outpatient levels which are expected to continue going forward.
- Expense assumptions are based on 2014 levels, as no incremental expenses are anticipated as a result of this application.

### Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$138,218 during the first year after the disestablishment of the EEHA. Budget assumptions are based on the historical experience of the hospital. The applicant has indicated that the hospital has not received financial assistance from EEHA.

BFA Attachment A is a summary of the 2012 through 2014 certified financial statements of Eastern Long Island Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position for the period. Also, the facility achieved an average positive net income from 2012 through 2013. In 2014, the facility had a net loss of \$122,608. The applicant has indicated that, though many factors had an influence, during 2014 a major contributory factor was due to the loss of their captive physician practice which contributed a \$300,350 loss to their bottom line. The loss was expected as part of a ramp up of the hospital's physician practice development.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

### Recommendation

**From a financial perspective, approval is recommended.**

<h2>Attachments</h2>
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BFA Attachment A 2012 - 2014 Financial Summary of Eastern Long Island Hospital

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 6<sup>th</sup> day of August, 2015 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 disestablish Peconic Health Care Corporation d/b/a East End Health Alliance as the active parent/co-operator of the hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151247 E

Eastern Long Island Hospital

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department, should ELIH elect to maintain involvement with EEHA as an administrative service provider. [HSP]
2. Submission of a photocopy of the applicant's Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's filing receipt with the New York Secretary of State for the Certificate of Amendment of the Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's by-laws, acceptable to the Department. [CSL]
5. A photocopy of the Certificate of Amendment of the Certificate of Incorporation of East End Health Alliance, acceptable to the Department. [CSL]
6. A photocopy of the Bylaws of East End Health Alliance, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151166-B  
The Birthing Center of NY

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** April 8, 2015

Executive Summary

Description

The Birthing Center of NY, Inc. (BCNY), a recently formed New York corporation, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a freestanding birthing center. BCNY will sub-lease 3,500 square feet of space on the first floor of a multi-purpose building located at 6702-6706 Third Avenue, Brooklyn (Kings County). The D&TC site will include four birthing rooms with the requisite support areas.

The sole shareholder, officer, and director of BCNY is Lisa Eng, M.D., a board-certified obstetrician and gynecologist.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The number of projected visits is 150 in Year 1 and 300 in Year 3.

Program Summary

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

Financial Summary

The project cost of \$135,780 will be met with shareholder's equity.

Budget:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$791,144	\$1,582,287
Expenses	<u>\$865,436</u>	<u>\$1,121,911</u>
Net Income (Loss)	(\$74,292)	\$460,376

## 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 a revised and executed Certificate of Amendment of the Certificate of Incorporation of The Birthing Center of NY Inc., acceptable to the Department. [CSL]
3. Submission of an amendment to the bylaws of The Birthing Center of NY Inc., acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Per 5/15/15 conversation with the project architect, Joseph Pallante, the following items will be corrected and reflected in the required submission of Final Construction Documents and built project:
  - 1 hour minimum rated partition as demising wall, separating Article 28 tenant from adjacent tenant space.
  - Southerly most Article 28, right-hand exit door to outside stair landing, to be replaced with left-hand door to allow unimpeded flow to outside the building and exit stair. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction (SEE ATTACHED). [AER]
8. Construction must start on or before November 1, 2015 and construction must be completed by January 31, 2016, presuming approval to start construction is been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**August 6, 2015**



## Need Analysis

### Background and Analysis

The service area includes Kings and Richmond Counties. The Birthing Center will provide healthy women, anticipating an uncomplicated labor and birth, with an alternative to delivering in a hospital or at home by providing a safe, home-like environment. The Birthing Center will offer standard prenatal care, including prenatal tests, as well as care during and after labor and delivery.

The number of live births in Kings and Richmond counties during 2013 totaled 46,341, which represents approximately 40% of the births in New York City and approximately 20% of the births across New York State. (Source: DOH vital statistics)

According to the National Center for Health Statistics, for 2012, in states with an availability of birthing centers, out-of-hospital births comprised 3% to 6% of the state's births, instead of the national average for out-of-hospital births of 1.36%. There is currently one other D&TC, Brooklyn Birthing Center, which provides birthing services in Kings County. (Source: HFIS) Approval of this project would increase accessibility to birthing services for low-risk women in Kings and Richmond counties.

The number of projected visits is 150 in Year 1 and 300 in Year 3.

### Conclusion

The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

Approval of this project will enhance accessibility to non-hospital birthing services for low-risk women in Kings and Richmond counties, as well as the general New York City area.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

The Birthing Center of NY Inc. (BCNY), a newly formed NYS corporation, is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) freestanding birthing center to be located at 6702-6706 Third Avenue in Brooklyn (Kings County).

The Birthing Center plans to provide healthy women who anticipate an uncomplicated labor and birth an alternative to delivering in a hospital or at home by providing a safe, home-like environment. The Center will renovate 3,500 square feet of space to create four birthing rooms and associated support space. BCNY will offer standard prenatal care, including prenatal tests, as well as care during and after labor and delivery.

<b>Proposed Operator</b>	The Birthing Center of NY Inc.
<b>Doing Business As</b>	Birthing Center of NY
<b>Site Address</b>	6702-6706 Third Avenue Brooklyn (Kings County), New York 11220
<b>Approved Services</b>	Birthing Service - Outpatient
<b>Shifts/Hours/Schedule</b>	The Center will provide birthing and prenatal care services 24 hours per day, seven days per week.
<b>Staffing (1st Year / 3rd Year)</b>	8.1 FTEs increasing to 11.2 FTEs by the third year of operation
<b>Medical Director(s)</b>	Dr. Lisa Eng, D.O.

<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Lutheran Medical Center 1.0 mile / 4 minutes away
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Character and Competence

The sole shareholder of BCNY is Lisa Eng, D.O.

Dr. Eng is a local board-certified Obstetrician/Gynecologist with 20 years of experience. She is on the medical staff of Lutheran Medical Center, The Brooklyn Hospital Center, and Wyckoff Heights Medical Center, and has been the Chair of the Department of OB/GYN at Wyckoff Heights Medical Center, responsible for a department in one of the highest risk districts for obstetrics and gynecology in Kings County. In addition, Dr. Eng has been a member or served as president of numerous medical organizations and committees.

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.

Recommendation

**From a programmatic perspective, approval is recommended.**

<b>Financial Analysis</b>
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Total Project Cost and Financing

Total project cost for equipment and fees is estimated at \$135,780, broken down as follows:

Other Fees	\$24,720
Moveable Equipment	103,328
Telecommunication	5,000
Application Fee	2,000
Additional Processing Fee	<u>732</u>
<b>Total Project Cost</b>	<b>\$135,780</b>

The total project cost of \$135,780 will be met from shareholder's equity.

Lease Rental Agreement

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

Date	December 1, 2014
Premises:	3,500 sq. ft., located at 672-6706 Third Avenue, Brooklyn, NY
Building Owner/Landlord:	Convergent Medical Management
Lessee/ Sub-landlord:	Excelamed, Inc.
Sub-Lessee:	The Birthing Center of NY, Inc.
Term:	10 Years with 1 (10 year) renewal option
Rental:	\$102,000 per annum (\$8,500 per month) \$29.14 per Sq. feet. 3% increase in rent after 1st 5 years.
Provisions:	Tenant pays- Taxes, Utilities, Insurance, Maintenance fee.

The landlord has provided an affidavit stating the rental agreement between the Landlord and sub-landlord is a non-arm's length agreement in that there is common ownership (same owner).

The applicant has submitted an affidavit stating the lease agreement with sub-lessee BCNY is an arm's length transaction. The applicant also has provided letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

### Operating Budget

The applicant has submitted their Year 1 and 3 operating budgets, in 2015 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid-MC	\$303,750	\$607,500
Commercial-FFS	335,925	671,850
Private Pay	151,469	302,937
Total Revenue	\$791,144	\$1,582,287
Expenses:		
Operating	\$747,804	\$1,004,279
Capital	<u>117,632</u>	<u>117,632</u>
Total	\$865,436	\$1,121,911
Net Income	(\$74,292)	\$460,376
Total Visits	150	300
Total Cost Per Visits	5,769.57	3,739.70

The following is noted with respect to the submitted budget:

- The budgeted revenue is comprised of two components, labor and delivery and well child care. The applicant states there are only two freestanding birthing center in New York State, and there is no public information available on historical utilization or revenue rates. The applicant made the following assumptions:
  - A 2014 study by the Centers for Medicare & Medicaid Services on potential Medicaid cost saving for maternity care at freestanding birthing centers estimates that Medicaid will save 16% of the hospital cost for delivery, if delivery is performed at a free standing birthing center.
  - Using an average reimbursement rate for Brooklyn Hospitals (APR DRG 560) of \$6,988 X 84% or \$5,870, and based on communication with a birthing center in Western New York and the DOH, the applicant estimated that the reimbursement rate for free standing birthing center would be around \$3,500 for each labor and delivery visit under Medicaid Manage Care.
- The reimbursements rates for other payors is based on the following:
  - Commercial at 150% of Medicaid
  - Private Pay at 77% of Commercial
- The projected operating expenses are based on the applicant's experience along with her research of freestanding birthing centers in other states. The cost per visits is expected to decline as volume increases. The applicant has indicated that the major cost category affecting delivery is staffing costs. From the very beginning, the facility expects to have 8.1 FTEs (covering the birthing center for 24 hours a day) and by the third year FTEs will grow by 3.1.
- The breakeven utilization is approximately 67% of the third year's projected utilization or 202 procedures.
- Utilization by payor source for years one and three is as follows:

Payor:	<u>Year 1</u>		<u>Year 3</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-MC	75	50%	150	50%
Commercial -FFS	45	30%	90	30%
Private Pay	27	18%	54	18%
Charity	<u>3</u>	<u>2%</u>	<u>6</u>	<u>2%</u>
Total	150	100%	300	100%

### Capability and Feasibility

The total project cost of \$135,780 will be satisfied from the shareholders equity.

Working capital requirements are estimated at \$186,986 based on two months of year three expenses. The applicant will provide the total working capital of \$186,986 from equity. BFA Attachment A is a summary of the member's net worth, which shows Dr. Eng has sufficient liquid resources to meet both the project's equity and working capital requirements.

BFA Attachment B is the Pro-Forma Balance Sheet of The Birthing Center of NY, Inc. that shows operation will start off with \$322,766 in equity.

The submitted budget projects a net loss of \$74,292 in Year 1 but by Year 3 the birthing center is expected to generate \$460,376 in net income. Medicaid reimbursement is based on estimated Medicaid Managed Care payments for maternity care at the freestanding birthing center. The reimbursement rate for Commercial payors is estimated at 150% of the Medicaid rate, with the private pay rate estimated at 77% of the commercial rate. The budget appears reasonable.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Net Worth Statement of Proposed Members of The Birthing Center of NY, Inc.
BFA Attachment B	Pro-Forma Balance Sheet of The Birthing Center of NY, 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 6<sup>th</sup> day of August, 2015 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 freestanding diagnostic and treatment center birthing center located at 6702-6706 Third Avenue, Brooklyn, 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:

151166 B

FACILITY/APPLICANT:

The Birthing Center of NY

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 a revised and executed Certificate of Amendment of the Certificate of Incorporation of The Birthing Center of NY Inc., acceptable to the Department. [CSL]
3. Submission of an amendment to the bylaws of The Birthing Center of NY Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Per 5/15/15 conversation with the project architect, Joseph Pallante, the following items will be corrected and reflected in the required submission of Final Construction Documents and built project:
  - 1 hour minimum rated partition as demising wall, separating Article 28 tenant from adjacent tenant space.
  - Southerly most Article 28, right-hand exit door to outside stair landing, to be replaced with left-hand door to allow unimpeded flow to outside the building and exit stair. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction (SEE ATTACHED). [AER]
8. Construction must start on or before November 1, 2015 and construction must be completed by January 31, 2016, presuming approval to start construction is been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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 # 142278-E**  
**Nesconset ZJ 1 LLC d/b/a Nesconset Center for Nursing  
and Rehabilitation**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** January 9, 2015

**Executive Summary**

**Description**

Nesconset ZJ 1 LLC, d/b/a Nesconset Center for Nursing and Rehabilitation, a New York limited liability company, requests approval to be established as the operator of Nesconset Center for Nursing and Rehabilitation, a 240-bed Article 28 residential health care facility (RHCF) located at 100 Southern Boulevard, Nesconset (Suffolk County). The RHCF operates two off-site Adult Day Health Care Programs (ADHCPs) in Suffolk County, a 90-registrant ADHCP located at 575 Clayton Street in Central Islip and a 75-registrant ADHCP located at 45 Rocky Point Road in Middle Island, which are also part of this change in ownership request. The facility is currently operated by Nesconset Acquisition LLC. With this application, there will be a reduction of twelve (12) RHCF beds, bringing the total number down to 228 beds. There will be no change in services provided.

On September 18, 2014, Nesconset Acquisition LLC entered into an Asset Purchase Agreement (APA) with Nesconset ZJ 1 LLC for the sale and acquisition of the operating interests of the RHCF and the two ADHCPs, upon approval by the Public Health and Health Planning Council (PHHPC). Concurrently, Nesconset NC Realty LLC, the current RHCF real property owner, entered into a Contract of Sale (COS) with Nesconset ZJ Realty 1 LLC for the sale and acquisition of the real property interest of the skilled nursing facility. The applicant will lease the RHCF premises from Nesconset ZJ Realty 1 LLC and enter into an Assignment and

Assumption Agreement to transfer goodwill and leasehold improvements to Nesconset ZJ Realty 1 LLC in exchange for the assumption of liabilities related to the acquisition of the operating interest. There is a relationship between Nesconset ZJ 1 LLC and Nesconset ZJ Realty 1 LLC in that the entities have several members in common.

Concurrent with the APA and RHCF real property COS transactions, the current ADHCP real property owners, Islip DC Realty, LLC (Central Islip site) and MDDC Realty, LLC (Middle Island site), entered into Contracts of Sale with Central Island Realty 1 LLC and Middle Island Realty 1 LLC, respectively, for the sale and acquisition of the real property associated with the ADHCP sites. The applicant will lease the ADHCP premises from Central Island Realty 1 LLC and Middle Island Realty 1 LLC. There is a relationship between Nesconset ZJ 1 LLC, Central Island Realty 1 LLC and Middle Island Realty 1 LLC in that the entities have several members in common.

The closing of the RHCF and ADHCP real property COSs will be concurrent with the closing of the APA upon approval of this application by the PHHPC.

Ownership of the operations before and after the requested change is as follows:

Current Operator	
Nesconset Acquisition LLC	
Members:	%
Robert Heppenheimer	33.34%
Anupadevi Lamba	33.33%
Smita Lodha	33.33%
Proposed Operator	
Nesconset ZJ 1 LLC	
Members:	%
Nesconset ZJ 1 Holding, LLC	51%
Zev Farkas	50%
Joseph Schlanger	50%
Nesconset Investors, LLC	49%
Leslie Rieder	40%
Jonah Jay Lobell	50%
Samuel Rieder	10%

Concurrently under review, the applicant members of Nesconset ZJ 1 LLC are seeking approval to acquire the operating and realty interests in Hilaire Rehab and Nursing (CON #142279).

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

Nesconset Center for Nursing and Rehabilitation's occupancy was 87.5% in 2011, 92.4% in 2012 and 93.2% in 2013. Current occupancy as of July 1, 2015, is 89.6% with 25 vacant beds. With the reduction of 12 certified beds, occupancy is expected to increase to approximately 94%.

#### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review

indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Financial Summary

Nesconset ZJ 1 LLC will acquire the operating assets of the RHCf and ADHCPs for \$6,000,000 which will be funded as follows: \$1,160,000 from members' equity with the remaining \$4,840,000 to be assumed by Nesconset ZJ Realty 1 LLC, the proposed real property owner. Nesconset ZJ Realty 1 LLC will purchase the real property for \$21,950,000 and fund the \$26,790,000 required to acquire the real property and the assumption of Nesconset ZJ 1 LLC's debt, as follows: \$2,990,000 from members' equity and a \$23,800,000 loan with a 25-year term, self-amortizing at LIBOR plus 6.8% interest.

Central Island Realty 1 LLC will purchase the real property for one of the ADHCPs for \$5,400,000 to be funded as follows: \$900,000 from members' equity and a \$4,500,000 loan with a 25-year term, self-amortizing at LIBOR plus 6.8% interest. Middle Island Realty 1 LLC will purchase the other ADHCP real property for \$5,000,000 to be funded as follows: \$800,000 from members' equity and a \$4,200,000 loan with a 25-year term, self-amortizing at LIBOR plus 6.8% interest.

There are no project costs associated with this application.

#### Budget:

	RHCF	ADHCP	Total
Revenues	\$28,389,800	\$8,310,900	\$36,700,700
Expenses	<u>\$29,229,600</u>	<u>\$4,593,100</u>	<u>\$33,822,700</u>
Gain/(Loss)	(\$839,800)	\$3,717,800	\$2,878,000



## 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. The report should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and inform them about the facility's Medicaid Access policy;
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review of plans showing the proposed twelve bed reduction including the affected rooms and nursing unit(s). [LTC]
5. Submission of an executed assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
7. Submission of an executed real property loan commitment associated with the purchase of 45 Rocky Point Road, Middle Island, acceptable to the Department of Health. (BFA)
8. Submission of an executed real property loan commitment associated with the purchase of 575 Clayton Street, Central Islip, acceptable to the Department of Health. (BFA)
9. Submission of an executed real property loan commitment associated with the purchase of 100 Southern Boulevard, Nesconset, acceptable to the Department of Health. (BFA)
10. Submission of an executed Application for Authority of Nesconset Investors LLC, acceptable to the Department. (CSL)
11. Submission of an executed Articles of Organization for Nesconset ZJ Holding, LLC, which is acceptable to the Department. (CSL)

12. Submission of an executed Certificate of Amendment to the applicants Articles of Organization for Nesconset ZJ 1, LLC, which is acceptable to the Department. (CSL)
13. Submission of a photocopy of an executed and signed facility lease agreement between Central Island Realty 1, LLC and Nesconset ZJ1, LLC, which is acceptable to the Department. (CSL)
14. Submission of a photocopy of an executed and signed facility lease agreement between Middle Island Realty 1, LLC and Nesconset ZJ1, LLC, which is acceptable to the Department. (CSL)
15. Submission of a photocopy of an executed and signed facility lease agreement between Nesconset ZJ Realty 1, LLC and Nesconset ZJ1, LLC, which is acceptable to the Department. (CSL)
16. Submission of a photocopy of an executed Certificate of doing business under an assumed name, which is acceptable to the Department. (CSL)

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

# Need Analysis

## Project Description

Nesconset ZJ 1 LLC seeks approval to become the established operator of the Nesconset Center for Nursing and Rehabilitation, a 240-bed Article 28 residential health care facility (RHCF), located at 100 Southern Boulevard, Nesconset, 11767, in Suffolk County. Upon approval, the facility will reduce its total bed capacity by 12 RHCF beds.

## Background and Analysis

The change in ownership will result in a change in beds as noted in the chart below:

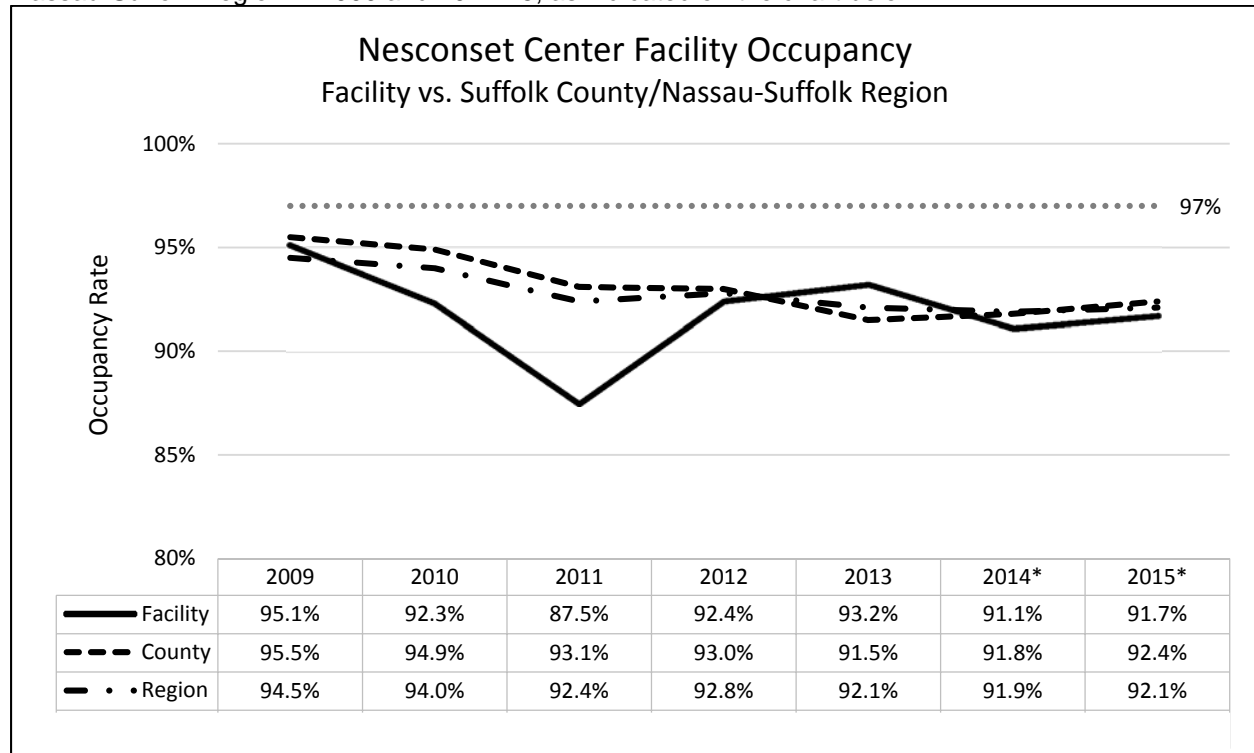
<b>Nesconset Center for Nursing and Rehabilitation</b>	<b>Current</b>	<b>Proposed Action</b>	<b>Upon Completion</b>
RHCF Beds	240	(12)	228
<b>Total</b>	<b>240</b>	<b>(12)</b>	<b>228</b>

There is currently a need for 1,724 beds in the Nassau-Suffolk Region as indicated in the table below.

### RHCF Need – Nassau-Suffolk Region

<b>2016 Projected Need</b>	16,962
<b>Current Beds</b>	15,538
<b>Beds Under Construction</b>	-300
<b>Total Resources</b>	15,238
<b>Unmet Need</b>	1,724

The overall occupancy for Suffolk County is 91.5% and for the Nassau-Suffolk Region is 92.1%. Nesconset Center for Nursing and Rehabilitation's occupancy was 87.5% in 2011, 92.4% in 2012 and 93.2% in 2013. The facility maintained occupancy rates above or consistent with Suffolk County and the Nassau-Suffolk Region in 2009 and 2012-15, as indicated on the chart below.



\*unaudited; based on weekly census

The applicant attributes occupancy below the 97% optimum to the improved health of many older individuals and the existence of less restrictive settings when care is needed. With the reduction of 12 certified beds, occupancy is expected to increase to approximately 94%. In addition to the 12-bed reduction, the applicant intends to increase occupancy in the following ways:

- Implement an outreach/education program with Senior Planning Services to admit Medicaid-pending patients. The proposed owner has used Senior Planning Services in partnership with other facilities under their operation and as a result, Medicaid-pending admissions comprise over 60% of annual long-term care admissions. Acceptance of Medicaid-pending patients may reduce placement of these residents outside their preferred service area.
- Change the model of care to one that directly supports DSRIP program goals and community needs: reduce potentially preventable hospital admissions/readmissions through the implementation of the INTERACT model, create a Congestive Heart Failure (CHF) Program as a subset of the INTERACT model to provide daily monitoring, early identification of instability and intervention to avoid hospitalization of CHF patients; provide transfusion and IV therapy services; integrate Palliative Care into the care model; and continue a pulmonary rehabilitation program.
- Design and implement cultural and ethnic programs for the growing Asian Indian, Korean, Chinese, Pakistani, Arab, West Indian and sub-Saharan African populations in the community. The program will develop small ethnic neighborhoods within the facility to address specific cultural, linguistic and spiritual practices and needs of residents. The proposed owner implemented a similar program in New Jersey, which increased RHCF facility admissions by 11 new residents in one month.

#### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Nesconset Center for Nursing and Rehabilitation's Medicaid admissions for 2012 and 2013 are 19.3% and 19.0%, respectively. This facility did not exceed the Suffolk County 75% Medicaid admission threshold rates in 2012 and 2013 of 21.1% and 19.4%, respectively; the facility will be required to follow the contingency plan as noted below.

#### Conclusion

It is expected that the measures proposed by the new owners to increase utilization and the proposed reduction in bed capacity will increase the facility's occupancy to more optimum levels. The approval of this application will help preserve access to needed RHCF care in the facility's service area and the Nassau-Suffolk planning region.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Nesconset Center for Nursing and Rehabilitation	Nesconset Center for Nursing and Rehabilitation
Address	100 Southern Boulevard Nesconset, NY. 11767	Same
RHCF Capacity	240	228
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Nesconset Acquisition, LLC	Nesconset ZJ 1 LLC  <u>Members</u> Nesconset ZJ 1 Holding, LLC            51% *Zev Farkas            50% (25.5%) Joseph Schlanger    50% (25.5%)  Nesconset Investors, LLC            49% *Jonah Lobell            50% (24.5%) Leslie Rieder            40% (19.6%) Samuel J. Rieder        10% (4.9%)  * Managing Member of proposed operator (%) indicates individuals indirect ownership % in Nesconset ZJ 1 LLC

### Character and Competence - Background

#### Facilities Reviewed

##### Massachusetts Nursing Homes

The Reservoir Center for Health and Rehabilitation	06/2012 to present
Colony Center for Health and Rehabilitation	06/2012 to present
Country Center for Health and Rehabilitation	06/2012 to present
Eliot Center for Health and Rehabilitation	06/2012 to present
Newton Wellesley Center for Alzheimer's Care	06/2012 to present
Sachem Center for Health and Rehabilitation	06/2012 to present

##### Maine Nursing Homes

Augusta Center for Health and Rehabilitation	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation	06/2012 to present
Brewer Center for Health and Rehabilitation	06/2012 to present
Eastside Center for Health and Rehabilitation	06/2012 to present
Kennebunk Center for Health and Rehabilitation	06/2012 to present
Norway Center for Health and Rehabilitation	06/2012 to present
Winship Green Center for Health and Rehabilitation	06/2012 to present

##### New Hampshire Nursing Homes

Dover Center for Health and Rehabilitation	06/2012 to present
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##### Pennsylvania Nursing Home

Lackawanna Health and Rehabilitation Center	11/2011 to present
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New Jersey Nursing Homes

Chapin Hill at Red Bank Nursing and Rehabilitation Center	09/2006 to present
Forest Manor Health Care Center	01/2007 to present

Wisconsin Nursing Homes

Fountain View Care Center	09/2007 to 12/2012
Highland Heights Healthcare Center	01/2010 to 12/2012
Wellspring of Milwaukee	10/2007 to 05/2012

Individual Background Review

Zev Farkas holds a New Jersey Nursing Home Administrator License and is considered to be in good standing. He lists his current employment as the founder of Chapin Healthcare, a nursing home management company located in Brooklyn, New York. He is also a managing partner at Chapin Hill at Red Bank Nursing and Rehabilitation Center, a nursing home located in Red Bank, New Jersey. Mr. Farkas discloses the following ownership interests in health facilities:

Lackawanna Health and Rehabilitation Center (PA)	11/2011 to present
Chapin Hill at Red Bank Nursing and Rehabilitation Center (NJ)	09/2006 to present
Forest Manor Health Care Center (NJ)	01/2007 to present
Fountain View Care Center (WI)	09/2007 to 12/2012
Highland Heights Healthcare Center (WI)	01/2010 to 12/2012
Wellspring of Milwaukee (WI)	10/2007 to 05/2012

Joseph Schlanger lists his employment as the Executive Director at Chapin Hill at Red Bank, a nursing home located in Red Bank, New Jersey. He has held this position for over seven years. Mr. Schlanger discloses no ownership interest in health facilities.

Jonah Lobell lists his employment as the President of Meridian Capital Group, LLC, a mortgage company located in New York, New York. He was previously a licensed stockbroker (Series 7), with license expiring in 2012. Mr. Lobell also continues to consult for his previous employer, Paramount BioSciences, a venture capital and drug development firm located in New York, New York. Jonah Lobell discloses the following ownership interests in health facilities:

The Reservoir Center for Health & Rehabilitation (MA)	06/2012 to present
Colony Center for Health and Rehabilitation (MA)	06/2012 to present
Country Center for Health and Rehabilitation (MA)	06/2012 to present
Eliot Center for Health and Rehabilitation (MA)	06/2012 to present
Newton Wellesley Center for Alzheimer's Care (MA)	06/2012 to present
Sachem Center for Health and Rehabilitation (MA)	06/2012 to present
Augusta Center for Health and Rehabilitation (ME)	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation (ME)	06/2012 to present
Brewer Center for Health and Rehabilitation (ME)	06/2012 to present
Eastside Center for Health and Rehabilitation (ME)	06/2012 to present
Kennebunk Center for Health and Rehabilitation (ME)	06/2012 to present
Norway Center for Health and Rehabilitation (ME)	06/2012 to present
Winship Green Center for Health and Rehabilitation (ME)	06/2012 to present
Dover Center for Health and Rehabilitation (NH)	06/2012 to present

Leslie Rieder lists her employment as Principal in Rieder Communities, a real estate investment company located in New York, New York. Ms. Rieder discloses no ownership interest in health facilities.

Samuel J. Rieder lists his employment as the Director of Acquisitions at Rieder Communities, a real estate investment company located in New York, New York. Mr. Rieder discloses no ownership interest in health facilities.

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of the Massachusetts Department of Public Health website as well as affidavit submitted by the applicant for The Reservoir Center for Health and Rehabilitation, Colony Center for Health and Rehabilitation, Country Center for Health and Rehabilitation, Eliot Center for Health and Rehabilitation, Newton Wellesley Center for Alzheimer's Care, and Sachem Center for Health and Rehabilitation in the state of Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of Schedule 2D, Out-of-State Compliance Reports for Augusta Center for Health and Rehabilitation, Brentwood Nursing Center for Health and Rehabilitation, Brewer Center for Health and Rehabilitation, Eastside Center for Health and Rehabilitation, Kennebunk Center for Health and Rehabilitation, Norway Center for Health and Rehabilitation, and Winship Green Center for Health and Rehabilitation in the state of Maine for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of Schedule 2D, Out-of-State Compliance Reports for Dover center for Health and Rehabilitation in the State of New Hampshire for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of Schedule 2D, Out-of-State Compliance Reports for Lackawanna Health and Rehabilitation Center in the state of Pennsylvania for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of Schedule 2D, Out-of-State Compliance Reports for Chapin Hill at Red Bank Nursing and Rehabilitation Center and Forest Manor Health Care Center in the state of New Jersey for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of Schedule 2D, Out-of-State Compliance Reports for Fountain View Care Center, Highland Heights Healthcare Center, and Wellspring of Milwaukee in the state of Wisconsin for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

## Project Review

This application proposes to establish Nesconset ZJ 1, LLC as the operator of Nesconset Center for Nursing and Rehabilitation. Nesconset ZJ 1, LLC is an existing New York State limited liability company whose members include two newly formed New York State limited liability companies, Nesconset ZJ 1 Holding, LLC and Nesconset Investors, LLC. Nesconset ZJ 1 Holding, LLC and Nesconset Investors, LLC is not known to be the operator of record on any health facility, or be the member of any health care related operating entities.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

## Conclusion

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

## Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed purchase agreement to acquire the RHCF and ADHCPs operating interests. The agreement will become effectuated upon PHHPC approval of this CON application. The terms are summarized below:

Date:	September 18, 2014
Seller:	Nesconset Acquisition LLC
Purchaser:	Nesconset ZJ 1 LLC
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: the business and operation of a 240-bed nursing home and adult day care nursing programs at 575 Clayton Street, Central Islip, New York 11722 and 45 Rocky Point Road, Middle Island, New York 11953, leases, inventory, supplies, and other articles of personal property, all Assumed Contracts, resident funds held in trust, any and all trade names, logos, trademarks and service marks, all security deposits and prepayments for future services, all menus, policies and procedures manuals and computer software, all telephone numbers, telefax numbers and domain names, copies of all financial books and records relating to the Facility, all resident/patient records, all employee and payroll records, Seller's Medicare and Medicaid provider agreements and provider numbers, goodwill and licenses and permits.
Excluded Assets:	House on the Middle Island property, Shares of Agewell MLTC, Shares of NYHCA, ADL Server, retroactive rates increases for services prior to closing date, accounts receivable prior to the closing date, securities, real estate tax funds prior to closing date and the assets in the 401(k) and deferred compensation plans.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$6,000,000
Payment:	\$300,000 contract deposit \$5,700,000 due at closing

Upon closing, the applicant will retain the supplies on hand, property and equipment and nursing home license, and will transfer the remaining assets to Nesconset ZJ Realty 1 LLC, the proposed real property owner.

The purchase price is proposed to be satisfied as follows:

Equity - Nesconset ZJ 1 LLC Members	\$1,160,000
Assumed Liability - Nesconset Realty ZJ 1 LLC	<u>\$4,840,000</u>
Total	\$6,000,000

BFA Attachment B is the net worth summary for the proposed owners which shows sufficient resources to meet the equity requirement.

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. The facility has no current outstanding Medicaid liabilities or assessments.



### Assignment and Assumption Agreements

The applicant has submitted a proposed Assignment and Assumption Agreement for the assignment of the assets associated with the Asset Purchase Agreement, as shown below:

Assignor:	Nesconset ZJ1 LLC
Assignee:	Nesconset ZJ Realty 1 LLC
Assets Transferred:	Goodwill; leasehold improvements; furniture, fixtures, equipment of Nesconset Center for Nursing and Rehabilitation, except those used in the operation of the facility.
Excluded Assets:	All assets not specified above
Considerations:	Liabilities remaining after equity contributions made by members toward the Purchase Price as defined in the Asset Purchase Agreement.

### Purchase Agreement for the Real Property

The applicant has submitted executed real estate purchase agreements related to the purchase of the RHCf and ADHCP real property. The terms are summarized below:

Date:	September 18, 2014
Seller/Realty:	Nesconset NC Realty, LLC
Purchaser Realty:	Nesconset ZJ Realty 1 LLC
Asset Transferred Realty:	100 Southern Boulevard, Nesconset, New York 11767
Purchase Price:	\$21,950,000
Payment of Purchase Price:	\$1,200,000 deposit paid on date of agreement \$20,750,000 due two days prior to closing

Date:	September 18, 2014
Seller/Realty:	MDDC Realty, LLC
Purchaser Realty:	Middle Island Realty 1 LLC
Asset Transferred Realty:	45 Rocky Point Road, Middle Island, New York 11953
Purchase Price:	\$5,000,000
Payment of Purchase Price:	\$280,000 deposit paid on date of agreement \$4,720,000 due two days prior to closing

Date:	September 18, 2014
Seller/Realty:	Islip DC Realty, LLC
Purchaser Realty:	Central Island Realty 1 LLC
Asset Transferred Realty:	575 Clayton Street, Central Islip, New York 11722
Purchase Price:	\$5,400,000
Payment of Purchase Price:	\$300,000 deposit paid on date of agreement \$5,100,000 due two days prior to closing

The proposed financing for the above mentioned agreements is as follows:

Equity - Nesconset ZJ Realty 1 LLC Members	\$2,990,000
Loan - 25 years, LIBOR plus 6.80%, self-amortizing	<u>\$23,800,000</u>
Total *	\$26,790,000

\*Concurrent with the real property acquisition, Nesconset ZJ Realty 1 LLC will assume \$4,840,000 in liability from Nesconset ZJ 1 LLC; hence, the referenced loan includes funds to finance the assumption of those liabilities, as well as the cost associated with the Real Property.

Equity - Middle Island Realty 1 LLC Members	\$800,000
Loan - 25 years, LIBOR plus 6.80%, self-amortizing	<u>\$4,200,000</u>
Total	\$5,000,000

Equity - Central Island Realty 1 LLC Members	\$900,000
Loan - 25 years, LIBOR plus 6.80%, self-amortizing	<u>\$4,500,000</u>
Total	\$5,400,000

BFA Attachment B provides the members' net worth summaries, which reveals sufficient resources to meet the equity requirements. Letters of interest for the respective loans have been provided by Formation Lending Group to finance the purchases at the above stated terms.

#### Lease Agreement

Executed leases have been submitted to lease the RHCF and ADHCP real property, as summarized below:

Date:	December 31, 2014
Premises:	100 Southern Boulevard, Nesconset, NY 11767
Owner/Landlord:	Nesconset ZJ Realty 1 LLC
Lessee:	Nesconset ZJ 1 LLC
Term:	323 months
Rent:	\$3,095,054 per annum
Provisions:	Triple Net

Date:	December 31, 2014
Premises:	575 W. Lowell Ave a/k/a 575 Clayton Street, Central Islip, NY 11722
Owner/Landlord:	Central Island Realty 1 LLC
Lessee:	Nesconset ZJ 1 LLC
Term:	323 months
Rent:	\$556,352 per annum
Provisions:	Triple Net

Date:	December 31, 2014
Premises:	45 Rocky Point Road, Middle Island, NY 11953
Owner/Landlord:	Middle Island Realty 1 LLC
Lessee:	Nesconset ZJ 1 LLC
Term:	323 months
Rent:	\$519,157 per annum
Provisions:	Triple Net

The applicant acknowledges that the lease agreements are non-arm's length. There is a relationship between the proposed operator and the proposed real property owners in that they share four members in common.

## Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year of operations subsequent to the change in ownership, as summarized below:

<u>RHCF (228 beds):</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$284.37	\$16,321,600
Medicare	\$660.21	\$6,333,700
Commercial	\$454.39	\$2,798,600
Private Pay	\$454.39	\$2,784,500
Other		<u>\$151,400</u>
Total Revenues		\$28,389,800
Expenses:		
Operating	\$327.54	\$25,966,000
Capital	\$41.17	<u>\$3,263,600</u>
Total Expenses		\$29,229,600
Net Income		(\$839,800)
Utilization (patient days)		79,275
Occupancy		95.3%
Breakeven (includes ADHCP)		87.8%

The following is noted with respect to the submitted budget:

- Revenue assumptions for Medicare, Private Pay and Commercial payors are based on the current operator's actual 2013 payment rates for the respective payors. The Medicaid rate is based on facility's 2015 Medicaid Regional Pricing rate with a 2.5% increase to project to rate year 2016.
- Expense assumptions are based on the historical experience of the facility taking into consideration reductions to reflect the decertification of twelve RHCF beds and other cost containment measures.
- Other revenue for cafeteria, gift shop, television and radio rentals, medical records fees and vending machine commissions was projected based on historical experience.
- Utilization by payor source for the RHCF for the first year after the change in operator is as follows:
  - Medicaid Fee-for-Service 72.40%
  - Medicare Fee-for-Service 12.10%
  - Commercial Manage Care 7.73%
  - Private Pay 7.77%

<u>ADHCP (165 slots total):</u>	<u>Total</u>
Revenues:	
Medicaid	\$8,048,500
Private Pay	\$262,400
Total Revenues	\$8,310,900
Expenses	\$4,593,100
Net Income	\$3,717,800
Utilization (Visits)	48,610
Cost Per Visit	\$75.07

- ADHCP visits will be 97.5% Medicaid and 2.5% Private Pay.
- ADHCP projections reflect the combined expenses and revenues of the Central Islip and Middle Island sites.
- Maximum ADHCP visits is 54,340 based on a seven-day week with reduced weekend capacity. ADHCP utilization is projected at 78.55%.

The combined revenues and expenses during the first year for the RHCF and ADHCP services are as follows:

Revenues	\$36,700,700
Expenses	<u>\$33,822,700</u>
Net Income	\$2,878,000

The projected budget appears reasonable.

#### Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the operating interests in the RHCF and ADHCPs is \$6,000,000 which will be funded with \$1,160,000 from member's equity with liability for the remaining \$4,840,000 to be assumed by the proposed real property owner, Nesconset ZJ Realty 1 LLC. Concurrent with the closing of the APA, Nesconset ZJ Realty 1 LLC will purchase the RHCF real property for \$21,950,000 which, along with the assumption of the \$4,840,000 liability for the operating interest, will be funded as follows: \$2,990,000 in members' equity along with a \$23,800,000 loan at the above stated terms. Central Island Realty 1 LLC will purchase one ADHCP's real property for \$900,000 in members' equity along with a \$4,500,000 loan at the above stated terms. The second ADHCP real property will be purchased by Middle Island Realty 1 LLC for \$800,000 with a \$4,200,000 loan at the terms stated above. BFA Attachment B provides the members' net worth summaries, which shows sufficient liquid assets to complete the transactions.

The working capital requirements are estimated at \$5,637,117 based on two months of the first year expenses. The applicant indicated working capital will be satisfied in excess of the two month requirement with \$3,100,000 in member equity and a \$3,100,000 five-year term loan at 6.5% interest. The applicant submitted a letter of interest in regard to the financing. As referenced above, there are sufficient resources to satisfy the projects' equity requirements.

BFA Attachment C is Nesconset ZJ 1 LLC's pro forma balance sheet as of the first day of operation, which shows members' equity of \$4,260,000. As a result of the proposed Assignment and Assumption Agreement, leasehold improvements and goodwill are not included in the proposed operator's balance sheet.

Expenses are expected to decline in Year One based largely on reductions to: salaries and benefits, purchased and contracted services, administrative costs related to the elimination of the Executive Director and Director of Human Services positions, reduced legal fees and reductions in laundry, housekeeping and patient food costs. The reductions are reflected in the applicant's projected elimination of 31.6 FTEs in Year One. The decline in expenses overall results in a reduction of \$1,448,125 in Year One.

The budget demonstrates a \$1,296,040 increase in net revenues in Year One. The applicant anticipates that a change in their care model will lead to an increase in utilization and support their DSRIP program goals. Program changes include: implementation of an INTERACT (Interventions to Reduce Acute Care Transfers) model; a program to manage patients with Congestive Heart Failure consistent with Stony Brook University Hospital PPS's community needs assessment; integrating palliative care into the care model; forming cultural programs to address growing Indian, Korean, Chinese and Pakistani populations in the community; and adding a pulmonary rehabilitation program. These initiatives are reflected in the projected occupancy rates in the first and third years after establishment. The applicant believes the program changes will support their participation in the Stony Brook University Hospital PPS and facilitate a transition to value based reimbursement.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period. Suffolk County has transitioned to Medicaid Managed Care for new enrollees. The applicant states that Nesconset has entered into contracts with fourteen Managed Long Term Care plans in Suffolk County.

BFA Attachment D is the 2012-2014 financial summary of Nesconset Acquisition LLC. As shown, the facility had an average negative working capital position of \$800,157, average positive net assets of \$3,252,818 and generated an average loss of \$370,801 for the period. The applicant indicated that reason for the negative performance was due to excessive management and accounting fees, excessive salaries for select administrative, food service and custodial personnel, and excessive contract service costs. These expenses are being brought into line or will be eliminated with the change in operator. Occupancy for the RHCFC was 90.55% for 2014 and 93.19% in 2013 which negatively impacted revenues. For the Middle Island ADHCP, occupancy was 94.91% in 2014 and 96.91% in 2013. For the Central Islip ADHCP, occupancy was 83.04% in 2014 and 89.65% in 2013. The ADHCP operations favorably impact the profitability the overall operations.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Current and Proposed Owners of the real property
BFA Attachment B	Net Worth Summary for the members of Nesconset ZJ1 LLC
BFA Attachment C	Pro Forma Balance Sheet for Nesconset ZJ1 LLC
BFA Attachment D	Nesconset Acquisition, LLC 2012-2014 financial summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6<sup>th</sup> day of August, 2015 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 Nesconset ZJ1 LLC as the new operator of the facility located at 100 Southern Boulevard, Nesconset, currently operated by Nesconset Acquisition, LLC and decertify 12 RHCF beds, 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:

142278 E

FACILITY/APPLICANT:

Nesconset ZJ 1 LLC d/b/a Nesconset Center for  
Nursing and Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. The report should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and inform them about the facility's Medicaid Access policy;
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period.  
[RNR]
4. Submission and programmatic review of plans showing the proposed twelve bed reduction including the affected rooms and nursing unit(s). [LTC]
5. Submission of an executed assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
7. Submission of an executed real property loan commitment associated with the purchase of 45 Rocky Point Road, Middle Island, acceptable to the Department of Health. (BFA)
8. Submission of an executed real property loan commitment associated with the purchase of 575 Clayton Street, Central Islip, acceptable to the Department of Health. (BFA)
9. Submission of an executed real property loan commitment associated with the purchase of 100 Southern Boulevard, Nesconset, acceptable to the Department of Health. (BFA)

10. Submission of an executed Application for Authority of Nesconset Investors LLC, acceptable to the Department. (CSL)
11. Submission of an executed Articles of Organization for Nesconset ZJ Holding, LLC, which is acceptable to the Department. (CSL)
12. Submission of an executed Certificate of Amendment to the applicants Articles of Organization for Nesconset ZJ 1, LLC, which is acceptable to the Department. (CSL)
13. Submission of a photocopy of an executed and signed facility lease agreement between Central Island Realty 1, LLC and Nesconset ZJ1, LLC, which is acceptable to the Department. (CSL)
14. Submission of a photocopy of an executed and signed facility lease agreement between Middle Island Realty 1, LLC and Nesconset ZJ1, LLC, which is acceptable to the Department. (CSL)
15. Submission of a photocopy of an executed and signed facility lease agreement between Nesconset ZJ Realty 1, LLC and Nesconset ZJ1, LLC, which is acceptable to the Department. (CSL)
16. Submission of a photocopy of an executed Certificate of doing business under an assumed name, which is acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 142279-E  
Huntington Acquisition 1 LLC d/b/a Hilaire Rehab and  
Nursing

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** January 9, 2015

Executive Summary

**Description**

Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing, a New York limited liability company, requests approval to be established as the operator of Hilaire Rehab & Nursing, a 76-bed, Article 28 residential health care facility (RHCF) located at 9 Hilaire Drive, Huntington (Suffolk County). The facility is currently operated by Hilaire Farm Skilled Living & Rehabilitation Center, LLC (Hilaire Farm). A separate entity, Huntington Realty 1, LLC, will acquire the real property. There will be no change in services provided.

On September 18, 2014, Hilaire Farm entered into an Asset Purchase Agreement (APA) with Huntington Acquisition 1, LLC for the sale and acquisition of the operating interests of the RHCF. Simultaneously, the realty owner, Skillaire LLC, entered into a Real Estate Purchase Agreement (REPA) with Huntington Realty 1, LLC for the sale and acquisition of the facility's real property. The APA and REPA will close at the same time upon approval of this application by the Public Health and Health Planning Council (PHHPC). There is a relationship between Huntington Acquisition 1, LLC and Huntington Realty 1, LLC in that the entities have several members in common. The applicant will lease the premises from Huntington Realty 1, LLC.

Ownership of the operations before and after the requested change is as follows:

Current Operator	
Hilaire Farm Skilled Living & Rehabilitation Center, LLC	
<b>Members:</b>	<b>%</b>
Robert Heppenheimer	33.34%
Anupadevi Lamba	33.33%
Ajay Lodha	33.33%
Proposed Operator	
Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing	
<b>Members:</b>	<b>%</b>
Huntington ZJ1 Holding LLC	51%
Zev Farkas	50%
Joseph Schlanger	50%
Nesconset Investors LLC	49%
Jonah Lobell	50%
Leslie Rieder	40%
Samuel J Rieder	10%

At closing, Huntington Acquisition 1, LLC will enter into an Assignment and Assumption Agreement with Huntington Realty 1, LLC to transfer goodwill and leasehold improvements in exchange for Huntington Realty 1, LLC assuming the liabilities related to the acquisition of the operating interest. Huntington Acquisition 1, LLC will retain the operating license and equipment necessary to operate the facility, and Huntington Realty 1, LLC will assume the operator's mortgage liability at the time of closing.

Concurrently under review, the applicant members of Huntington Acquisition 1, LLC and the realty members of Huntington Realty 1, LLC are seeking approval to acquire the operating and realty interests, respectively, in Nesconset Center for Nursing and Rehabilitation (CON #142278).

OPCHSM Recommendation  
Contingent Approval

Need Summary

The change in ownership will not result in any change in beds or services. Hilaire Rehab and Nursing's occupancy was 84.8% in 2011, and 89.4% in 2012 and 89.5% in 2013. Current occupancy, as of July 1, 2015 is 75.0% with an overall, average occupancy of 82.3% in 2015.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

Huntington Acquisition 1, LLC will acquire the RHC operating assets for \$1,900,000 which will be funded as follows: \$610,000 from

members' equity with the remaining \$1,290,000 to be assumed by the proposed real property owner, Huntington Realty 1, LLC.

Huntington Realty 1, LLC will purchase the real property for \$5,750,000 and will fund the total \$7,040,000 required to acquire the real property and assume Huntington Acquisition 1, LLC's debt, as follows: \$540,000 from members' equity and a \$6,500,000 loan with a 25-year term, self-amortizing, at LIBOR plus 6.8% interest. As of July 8, 2015, the 30 day Libor rate is 0.17%. A letter of interest has been provided by Formation Lending Group. There are no project costs associated with this application.

Budget:		<u>Year One</u>
	Revenues	\$9,807,800
	Expenses	<u>\$9,517,800</u>
	Net Income	\$290,000

## 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed Certificate of doing business under an assumed name, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed and signed facility lease agreement, which is acceptable to the Department. [CSL]
9. Submission of an executed Certificate of Amendment to the applicants Articles of Organization, which is acceptable to the Department. [CSL]
10. Submission of an executed Application for Authority of Nesconset Investors, LLC, which is acceptable to the Department. [CSL]
11. Submission of an executed Articles of Organization for Huntington ZJ 1 Holdings, LLC, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**August 6, 2015**

# Need Analysis

## Background

Huntington Acquisition 1, LLC seeks approval to become the established operator of Hilaire Rehab and Nursing, a 76-bed, Article 28 residential health care facility (RHCF) located at 9 Hilaire Drive, Huntington, 11743, in Suffolk County. The current operator of the facility is Hilaire Farm Skilled Living & Rehabilitation Center, LLC d/b/a Hilaire Rehab & Nursing (Hilaire).

The facility is located in a stately mansion, which provides a homelike environment for residents. The small size of the facility, with all private, single rooms, facilitates individualized care and a high staff-to-patient ratio. The proposed operators plan to use these characteristics to increase the facility's occupancy to the Department's planning optimum by Year 3 of operations. To increase occupancy, the proposed operator will:

- Establish an enhanced relationship with Huntington Hospital, located 1.1 miles away, and North Shore LIJ Health System to facilitate admissions.
- Implement an outreach/education program with Senior Planning Services to admit Medicaid-pending patients. The proposed owner has used Senior Planning Services in partnership with other facilities under their operation and as a result, Medicaid-pending admissions comprise over 60% of annual long-term care admissions. Acceptance of Medicaid-pending patients may reduce placement of these residents outside their preferred service area.
- Change the model of care to one that directly supports DSRIP program goals and community needs: reduce potentially preventable hospital admissions/ readmissions through the implementation of the INTERACT model, create a Congestive Heart Failure (CHF) Program as a subset of the INTERACT model to provide daily monitoring, early identification of instability and intervention to avoid hospitalization of CHF patients; provide transfusion and IV therapy services; integrate Palliative Care into the care model; and continue a pulmonary rehabilitation program.

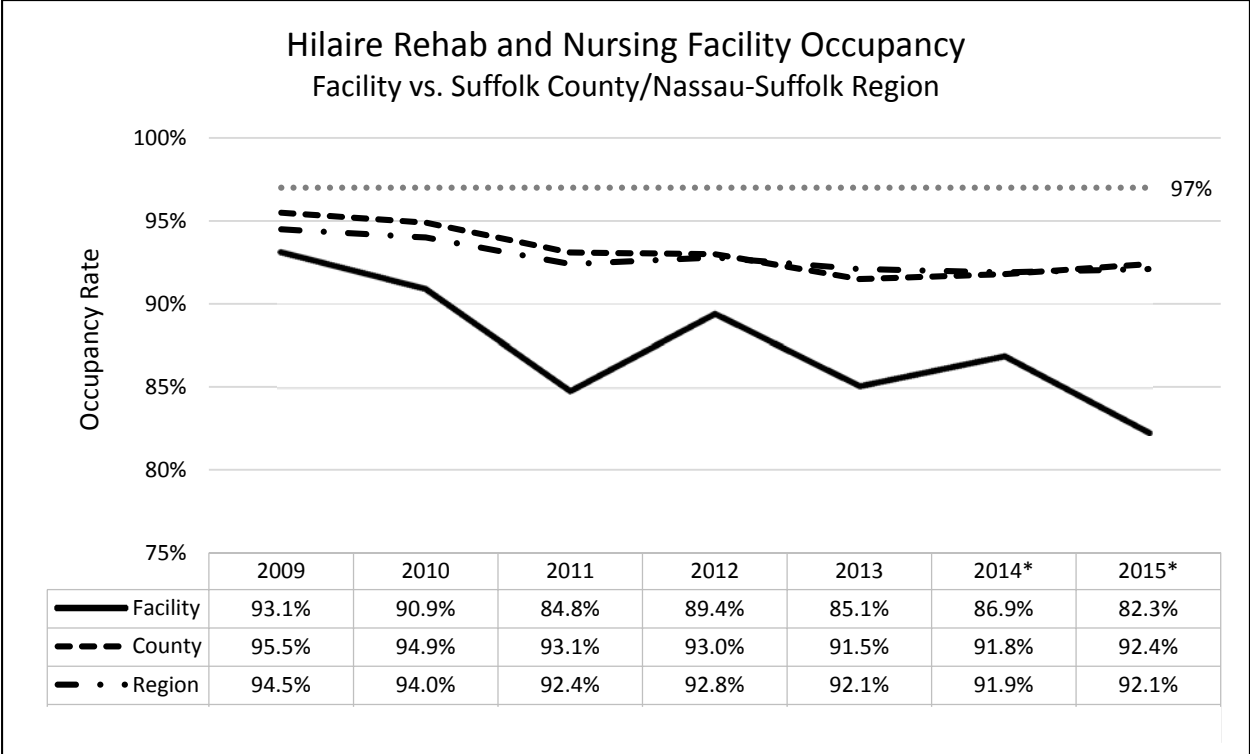
## Analysis

There is currently a need for 1,724 beds in the Nassau-Suffolk Region as indicated in Table 1 below.

**Table 1 – Region Need**

<b>2016 Projected Need</b>	16,962
<b>Current Beds</b>	15,538
<b>Beds Under Construction</b>	-300
<b>Total Resources</b>	15,238
<b>Unmet Need</b>	1,724

Hilaire Rehab and Nursing's occupancy was 84.8% in 2011, 89.4% in 2012 and 85.1% in 2013. According to the applicant, the facility experienced historically low occupancy due to a patient population that concentrates heavily on rehabilitative services, which, due to their shorter length of stay, contributes to lower occupancy rates. The recent decline in occupancy in 2015 is attributed to replacement of the facility's administrator and the current owner being out of the country for an extended period of time, resulting in a lack of leadership to focus on resident admissions. The overall occupancy for Suffolk County is 91.5% and for the Nassau-Suffolk Region is 92.1% as indicated in the following chart:



**Access**

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient’s admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Hilaire Rehab and Nursing’s Medicaid admissions for 2012 was 23.4% and exceeded the Suffolk County 75% rate of 21.1%. Hilaire Rehab and Nursing’s Medicaid admissions for 2013 was 10.3% and did not exceed the Suffolk County 75% rate of 19.4%; the facility will be required to follow the contingency plan as noted.

**Conclusion**

It is expected that the measures proposed by the new owners will increase the facility’s occupancy to more optimum levels. In an effort to “rightsize” RHCf bed capacity to be more congruent with actual need, the Department often requires a reduction in bed capacity in connection with a change of ownership or commencement of major renovation by facilities with lower occupancy. Although no bed reductions are required for Hilaire Nursing and Rehab, this application is being considered concurrently with CON #142278 for Nesconset Nursing Center, for which the Department is requiring a reduction of 12 beds in connection with the purchase of that facility by the same prospective owners as those for Hilaire. Therefore, from a planning perspective, the Department is calling for an overall reduction in excess bed capacity in the Nassau-Suffolk region in the processing of these two transactions.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Hilaire Rehab & Nursing	Hilaire Rehab & Nursing
Address	9 Hilaire Drive Huntington, NY. 11743	Same
RHCF Capacity	76	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Hilaire Farm Skilled Living & Rehabilitation Center, LLC	Huntington Acquisition 1, LLC  <u>Members</u> Huntington ZJ 1 Holding, LLC 51% *Zev Farkas 50% (25.5%) Joseph Schlanger 50% (25.5%)  Nesconset Investors, LLC 49% *Jonah Lobell 50% (24.5%) Leslie Rieder 40% (19.6%) Samuel J. Rieder 10% (4.9%)  *Managing Member of the proposed operator (%) indicates individuals indirect ownership % in Huntington Acquisition 1, LLC

### Character and Competence - Background

#### Facilities Reviewed

##### Massachusetts Nursing Homes

The Reservoir Center for Health and Rehabilitation	06/2012 to present
Colony Center for Health and Rehabilitation	06/2012 to present
Country Center for Health and Rehabilitation	06/2012 to present
Eliot Center for Health and Rehabilitation	06/2012 to present
Newton Wellesley Center for Alzheimer's Care	06/2012 to present
Sachem Center for Health and Rehabilitation	06/2012 to present

##### Maine Nursing Homes

Augusta Center for Health and Rehabilitation	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation	06/2012 to present
Brewer Center for Health and Rehabilitation	06/2012 to present
Eastside Center for Health and Rehabilitation	06/2012 to present
Kennebunk Center for Health and Rehabilitation	06/2012 to present
Norway Center for Health and Rehabilitation	06/2012 to present
Winship Green Center for Health and Rehabilitation	06/2012 to present

##### New Hampshire Nursing Home

Dover Center for Health and Rehabilitation	06/2012 to present
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##### Pennsylvania Nursing Home

Lackawanna Health and Rehabilitation Center	11/2011 to present
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New Jersey Nursing Homes

Chapin Hill at Red Bank Nursing and Rehabilitation Center	09/2006 to present
Forest Manor Health Care Center	01/2007 to present

Wisconsin Nursing Homes

Fountain View Care Center	09/2007 to 12/2012
Highland Heights Healthcare Center	01/2010 to 12/2012
Wellspring of Milwaukee	10/2007 to 05/2012

Individual Background Review

Zev Farkas holds a New Jersey Nursing Home Administrator License and is considered to be in good standing. He lists his current employment as the founder of Chapin Healthcare, a nursing home management company located in Brooklyn, New York. He is also a managing partner at Chapin Hill at Red Bank Nursing and Rehabilitation Center, a nursing home located in Red Bank, New Jersey. Mr.

Farkas discloses the following ownership interests in health facilities:

Lackawanna Health and Rehabilitation Center (PA)	11/2011 to present
Chapin Hill at Red Bank Nursing and Rehabilitation Center (NJ)	09/2006 to present
Forest Manor Health Care Center (NJ)	01/2007 to present
Fountain View Care Center (WI)	09/2007 to 12/2012
Highland Heights Healthcare Center (WI)	01/2010 to 12/2012
Wellspring of Milwaukee (WI)	10/2007 to 05/2012

Joseph Schlanger lists his employment as the Executive Director at Chapin Hill at Red Bank, a nursing home located in Red Bank, New Jersey. He has held this position for over seven years. Mr. Schlanger discloses no ownership interest in health facilities.

Jonah Lobell lists his employment as the President of Meridian Capital Group, LLC, a mortgage company located in New York, New York. He was previously a licensed stockbroker (Series 7), with license expiring in 2012. Mr. Lobell also continues to consult for his previous employer, Paramount BioSciences, a venture capital and drug development firm located in New York, New York. Mr. Lobell discloses that he also is a director of SavaSeniorCare, a large national skilled nursing operating company, he does not own any equity in that company. Jonah Lobell discloses the following ownership interests in health facilities:

The Reservoir Center for Health & Rehabilitation (MA)	06/2012 to present
Colony Center for Health and Rehabilitation (MA)	06/2012 to present
Country Center for Health and Rehabilitation (MA)	06/2012 to present
Eliot Center for Health and Rehabilitation (MA)	06/2012 to present
Newton Wellesley Center for Alzheimer's Care (MA)	06/2012 to present
Sachem Center for Health and Rehabilitation (MA)	06/2012 to present
Augusta Center for Health and Rehabilitation (ME)	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation (ME)	06/2012 to present
Brewer Center for Health and Rehabilitation (ME)	06/2012 to present
Eastside Center for Health and Rehabilitation (ME)	06/2012 to present
Kennebunk Center for Health and Rehabilitation (ME)	06/2012 to present
Norway Center for Health and Rehabilitation (ME)	06/2012 to present
Winship Green Center for Health and Rehabilitation (ME)	06/2012 to present
Dover Center for Health and Rehabilitation (NH)	06/2012 to present

Leslie Rieder lists her employment as Principal in Rieder Communities, a real estate investment company located in New York, New York. Ms. Rieder discloses no ownership interest in health facilities.

Samuel J. Rieder lists his employment as the Director of Acquisitions at Rieder Communities, a real estate investment company located in New York, New York. Mr. Rieder discloses no ownership interest in health facilities.



## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of the Massachusetts Department of Public Health website as well as affidavit submitted by the applicant for The Reservoir Center for Health and Rehabilitation, Colony Center for Health and Rehabilitation, Country Center for Health and Rehabilitation, Eliot Center for Health and Rehabilitation, Newton Wellesley Center for Alzheimer's Care, and Sachem Center for Health and Rehabilitation in Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Augusta Center for Health and Rehabilitation, Brentwood Nursing Center for Health and Rehabilitation, Brewer Center for Health and Rehabilitation, Eastside Center for Health and Rehabilitation, Kennebunk Center for Health and Rehabilitation, Norway Center for Health and Rehabilitation, and Winship Green Center for Health and Rehabilitation in Maine for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Dover Center for Health and Rehabilitation in New Hampshire for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Lackawanna Health and Rehabilitation Center in Pennsylvania for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Chapin Hill at Red Bank Nursing and Rehabilitation Center and Forest Manor Health Care Center in New Jersey for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Fountain View Care Center, Highland Heights Healthcare Center, and Wellspring of Milwaukee in Wisconsin for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

## Project Review

This application proposes to establish Huntington Acquisition 1, LLC as the operator of Hilaire Rehab and Nursing. Huntington Acquisition 1, LLC is an existing New York State limited liability company whose members include two newly formed New York State limited liability companies, Huntington ZJ 1 Holding, LLC and Nesconset Investors, LLC. Huntington ZJ 1 Holding, LLC and Nesconset Investors, LLC is not known to be the operator of record on any health facility, or be the member of any health care related operating entities.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

## Conclusion

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

## Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	September 18, 2014
Seller:	Hilaire Farm Skilled Living & Rehabilitation Center, LLC
Purchaser:	Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing
Assets Transferred:	All rights, title and interest in the business assets lien free, the business and operation of the facility. The assets include leases, inventory, supplies, and other articles of personal property, all assumed contracts, resident funds held in trust, trade names, logos, trademarks and service marks, all security deposits and prepayments for future services, all menus, policies and procedures manuals and computer software, telephones numbers, telefax numbers and domain names, copies financial books and records relating to the facility, all resident/patient records, all employees payroll records, Seller's Medicare and Medicaid provider numbers, goodwill will and licenses and permits.
Excluded Assets:	Pre-closing accounts receivables; retroactive rate increases for services prior to closing date, securities, refunds and settlements prior to closing, and assets in 401 (k) and deferred compensation plans.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$1,900,000
Payment:	\$100,000 escrow deposit (paid at the time of signing) \$1,800,000 due at closing.

Upon closing, the applicant will retain the nursing home license, supplies on hand, and the equipment necessary to operate the facility and will transfer the remaining assets to the new real property owner.

The purchase price will be satisfied as follows:

Equity – Huntington Acquisition 1, LLC Members	\$610,000
Assumed Liability - Huntington Realty 1, LLC	<u>\$1,290,000</u>
Total	\$1,900,000

BFA Attachment B is the net worth summary for the members of Huntington Acquisition 1, LLC, which reveals sufficient resources to meet the 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/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. The facility has no current outstanding Medicaid liabilities.

### Assignment and Assumption Agreement

The applicant has submitted a draft Assignment and Assumption Agreement to assign certain assets to Huntington Realty 1, LLC, as summarized below:

Assignor:	Huntington Acquisition 1, LLC
Assignee:	Huntington Realty 1, LLC
Assets Transferred:	Goodwill, leasehold improvements, furniture, fixtures and equipment of Hilaire Rehab & Nursing, except those used in the operation of the facility.
Assets Excluded:	All assets not specified above
Considerations:	Liabilities remaining after equity contribution made by members towards the purchase price as defined in the Asset Purchase Agreement.

### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate purchase agreement related to the purchase of the RHCF's real property. The agreement close concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	September 18, 2014
Seller Realty:	Skillaire LLC
Purchaser Realty:	Huntington Realty 1, LLC
Asset Transferred: (Realty)	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 9 Hilaire Drive, Huntington, New York 11743 and further identified as (Section 97, Block 2, Lots 85,86, and 87 in the County of Suffolk).
Purchase Price:	\$5,750,000 (realty)
Payment of Purchase Price:	\$320,000 escrow deposit (paid at the time of signing) \$5,430,000 due at closing (includes assumed liability of operator)

The purchase price inclusive of the assumption of liabilities related to the acquisition of the operating interest is proposed to be satisfied as follows:

Equity – Huntington Realty 1, LLC Members	\$ 540,000
Loan – 25 years, self-amortizing, Libor + 6.80%	\$6,500,000
Total	\$7,040,000

BFA Attachment C is the proposed members' net worth summaries of Huntington Realty 1, LLC which reveals sufficient resources to meet the equity requirements. A letter of interest has been provided by Formation Lending Group to finance the above referenced purchases.

### Lease Agreement

An executed lease has been submitted to lease the RHCF real property. The terms are summarized below:

Date:	December 31, 2014
Premises:	76-bed RHCF located at 9 Hilaire Drive, Huntington, NY 117438
Owner/Landlord:	Huntington Realty 1, LLC
Lessee:	Huntington Acquisitions 1, LLC
Term:	323 months
Rent:	\$669,628 per year (\$55,802 per month)
Provisions:	Triple Net

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

Currently, Medicaid capital reimbursement is based on return of/return on equity methodology, which will not be altered upon the change in ownership.

## Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Year One</u>
Revenues:		
Medicaid-FFS	\$251.02	\$4,078,900
Medicare-FFS	\$636.09	\$4,036,000
Private Pay	\$438.93	\$1,682,000
All Other		<u>\$10,900</u>
Total Revenue		\$9,807,800
Expenses:		
Operating	\$332.59	\$8,788,900
Capital	<u>\$27.58</u>	<u>\$728,900</u>
Total	\$360.17	\$9,517,800
Net Income		<u>\$290,000</u>
Utilization( Patient days)		26,426
Occupancy		95.26%

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

- Expense assumptions are based on the historical experience of the facility and include lease rental expense.
- Medicaid revenue is based on the facility's current 2015 Medicaid Regional Pricing rate projected to 2016 by decreasing the transition adjustment factor by half.
- Medicare, Private Pay and Other Manage Care payment rates for are based blended rates of Hillaire for the first 9 months of 2014 without any adjustments.
- The projected utilization for the facility is 95.26% in Year One and 97% by Year Three. It is noted that utilization for the past three years has averaged around 87.13% and occupancy was 72.4% as of June 23, 2015, dropping from an average of 82.4% during the first half of 2015. The applicant indicated that the recent decline in occupancy is attributed to the replacement of the facility's administrator and the current owner being out of the country for an extend period of time, resulting in a lack of leadership and focus on resident admissions.
- The applicant plans on increasing utilization by changing the model of care that directly supports DSRIP program goals and community need by working closely with local health care and social providers. To facilitate a continued growth in utilization, the applicant plans on taking the following steps.
  - Establish a unique homelike environment for residents and their families by using its smaller size to facilitate highly individualized care along with a high staff to patient ratio;
  - Enhance relationships with hospitals, including Huntington Hospital and North Shore-LIJ Health System, which may result in increased referrals and admission to the RHCF;
  - Implement an outreach/education program with Senior Planning Services to help residents and their families obtain Medicaid eligibility in a timely manner;
  - Implement an evidence-based INTERACT model working closely with local hospitals to reduce acute care length of stay at hospitals by accelerating patient discharges and put in place a program that will substantially eliminate hospital readmissions, in keeping with the DSRIP goal;
  - Implement a Congestive Heart Failure Program to monitor residents with congestive heart failure for early identification of potential problems to avoid hospital admission;
  - Contract with fourteen of the sixteen Manage Long Term Plans in Suffolk County;
  - Implement Transfusion and IV Therapy Services, and Palliative Care; and
  - Continue its Pulmonary Rehabilitation Program.

- Utilization by payor source for the first year after the change in ownership is summarized below:

<u>Payor:</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	16,249	61.5%
Medicare-FFS	6,345	24.0%
Private Pay	<u>3,832</u>	<u>14.5%</u>
Total	26,426	100.00%

- The breakeven utilization is projected at 92%.

### Capability and Feasibility

The purchase price for the RHCF's operating interest is \$1,900,000 and will be funded as follows: \$610,000 in members' equity with the remaining \$1,290,000 to be assumed by the proposed real property owner, Huntington Realty 1, LLC. Concurrently, Huntington Realty 1, LLC will purchase the real property for \$5,750,000 to be funded as follows: \$540,000 in members' equity and a \$6,500,000 loan at the above stated terms (includes assumption of \$1,290,000 operating interest liability). Formation Lending Group has provided a letter of interest for the loan. BFA Attachments B and C provide the members' net worth summaries, which shows sufficient assets to complete the transactions. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,586,300 based on two months of year one expenses. The applicant will provide \$810,000 from the members' equity with the remaining \$810,000 to be satisfied through a five-year term loan at 6.50% interest rate, bringing working capital working to \$1,620,000. A letter of interest has been provided by Formation Lending Group. As referenced above, the members have sufficient liquid resources to meet both the project equity and working capital requirements.

The submitted budget projects net profit of \$290,000 in year one after the change in ownership. The budget was created taking into consideration the proposed new owners' experience in operating similar size facility (out of state RHCFs). The proposed operator projects to increase occupancy by refocusing on implementing various programs, as stated above. BFA Attachment D presents Huntington Acquisition 1, LLC's pro forma balance sheet, which shows the entity will start off with \$1,420,000 in member's equity. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period. Suffolk County has transitioned to Medicaid Managed Care for new enrollees.

BFA Attachment D is the 2011-2013 Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC. As shown, the RHCF had an average negative working capital position of \$1,266,000, average negative net assets of \$255,333, and an average negative income of \$204,333 for the period. The applicant indicated that the reason for the negative performance was due to low occupancy. During this period, the facility's average occupancy was 86.53%. The proposed sale of the nursing home is expected to result in improved utilization due to the aforementioned service enhancements and the satisfaction of liabilities with no impairment on the assets, thus improving the total net asset position. As shown on BFA Attachment E, the consolidated certified financial statement of Hilaire Farm Skilled Living & Rehabilitation Center and Skillaire LLC for 2014 shows that the RHCF and the realty entity had a positive working capital position of \$1,512,748 and positive net assets position of \$1,112,821.

Based on the preceding, it appears that the applicant has demonstrated the capability to precede in a financially feasible manner.

### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Pre and Post Ownership of the Realty
BFA Attachment B	Net Worth of Proposed Members, Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing.
BFA Attachment C	Net Worth of Proposed Realty Members, Huntington Realty 1, LLC.
BFA Attachment D	2011-2013 Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC
BFA Attachment E	2014 Certified Financial Statement of Hilaire Farm Skilled Living & Rehabilitation Center, LLC and Skillaire, LLC.
BFA Attachment F	Pro Forma Balance Sheet, Huntington Acquisitions 1, LLC d/b/a Hilaire Rehab & Nursing

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 6<sup>th</sup> day of August, 2015 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 Huntington Acquisition 1, LLC as the new operator of the 76-bed facility located at 9 Hilaire Drive, Huntington, currently operated by Hilaire Farm Skilled Living and Rehabilitation Center, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that 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:

142279 E

FACILITY/APPLICANT:

Huntington Acquisition 1, LLC  
d/b/a Hilaire Rehab & Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period.  
[RNR]
4. Submission of an executed assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed Certificate of doing business under an assumed name, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed and signed facility lease agreement, which is acceptable to the Department. [CSL]
9. Submission of an executed Certificate of Amendment to the applicants Articles of Organization, which is acceptable to the Department. [CSL]



10. Submission of an executed Application for Authority of Nesconset Investors, LLC, which is acceptable to the Department. [CSL]
11. Submission of an executed Articles of Organization for Huntington ZJ 1 Holdings, LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151169-E**  
**Westchester Center for Renal Care**

**Program:** Diagnostic and Treatment Center    **County:** Westchester  
**Purpose:** Establishment    **Acknowledged:** April 13, 2015

**Executive Summary**

**Description**

MS Acquisitions III, LLC d/b/a Westchester Center for Renal Care (Westchester Center), a New York limited liability company, requests approval to transfer 100% of the membership in a 9-station chronic renal dialysis Article 28 diagnostic and treatment center (D&TC) to eight new members. Westchester Center is located at 10 Claremont Avenue, Mount Vernon (Westchester County), on the cellar level of Parkview Operating Co., LLC d/b/a Westchester Center for Rehabilitation and Nursing, a 240-bed proprietary Article 28 residential health care facility (RHCF). The dialysis clinic was established under CON #072163 and issued their operating license effective December 11, 2014. There will be no disruption in services.

Membership within the operator, before and after the requested change is as follows:

<b>Current</b>	
Michael Melnicke	50%
Samuel Strulovitch	50%

<b>Proposed</b>	
Jonathan Bleier	47.2%
Joshua Peckman	14.5%
Morton Kleiner	14.0%
Henry Halpert	8.4%
Bruce Peckman	6.9%
Tovah Bane	4.5%
Moshe Bain	2.5%
Jay Gold	2.0%

With the exception of Morton Kleiner and Jay Gold, the proposed operating members are members of Westchester Center for Rehabilitation and Nursing, the RHCF in which the dialysis clinic is located.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
This project will not result in any change to the number of dialysis stations or services in Westchester County.

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

Financial Summary  
There are no project costs associated with this application.

The acquisition price for the purchase of the dialysis clinic is \$100 and will be provided in cash by the proposed operators. The proposed members stated the when they agreed to purchase the membership interests of the current members, the CON had not yet received approval and the clinic was not operating. Neither the current members nor the proposed members knew if the Department would give final approval to CON #072163. Thus, at the time the agreement was entered into (September 14, 2011), those membership interests had little value. The proposed

members took over the expense of moving the application forward on behalf of current members, and that expense as well as the nominal consideration in the agreement was fair value for what was in existence at the time of the agreement.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,304,568	\$2,134,747
Expenses	<u>1,290,888</u>	<u>1,897,772</u>
Net Income	\$13,680	\$236,975

## 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. [HSP]
2. Submission of an executed Consulting Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department of Health. (BFA)
4. Submission of an executed Medical Billing and Collection Services Agreement, acceptable to the Department of Health. (BFA)
5. Submission of Medicaid Affidavit that is acceptable to the Department. [CSL]
6. Submission of an executed Consulting and Administrative Services Agreement that is acceptable to the Department. [CSL]
7. Submission of an executed Amended and Restated Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
9. Submission of site control that is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 6, 2015**

## Need Analysis

### Analysis

The primary service area for the proposed facility is Westchester County, which had a population estimate of 969,296 in 2013. The percentage of the population aged 65 and over was 15.4 %. The nonwhite population percentage was 25.1 %. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Westchester County and New York State are listed below.

	Westchester County	State Average
Ages 65 and Over	15.4%	14.4%
Nonwhite	25.1%	29.1%

Source: U.S. Census 2015

### Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 280 free standing chronic dialysis stations operating in Westchester County and 12 in pipeline.
- Based upon DOH methodology, the 280 existing free standing stations in Westchester County could treat a total of 1,260 patients annually. Including the 12 additional pipeline stations, the county could treat a total of 1,314 patients annually.

### Projected Need

	2013		2018	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	1,267	1,130	1,471	1,312
Free Standing Stations Needed	282	252	327	292
Existing Stations	280	280	280	280
Pipeline Stations	12	12	12	12
Total Stations (Including Pipeline)	292	292	292	292
Total stations w/Approval of this CON	292	292	292	292
Unmet Need With Approval	-10	-40	35	0

\*Based upon an estimate of a three percent annual increase.

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting total stations w/approval of this CON from free standing stations needed. "Total Patients Treated" is from IPRO data for 2013.

**Conclusion**

The 280 stations in Westchester County serve a population of 969,296 residents. The retention of this facility will help maintain access to dialysis services in the area.

**Recommendation**

**From a need perspective, approval is recommended.**

**Program Analysis**

**Project Proposal**

Michael Melnicke and Samual Strulovitch, who each own 50% membership interest in MS Acquisitions III, LLC, d/b/a Westchester Center for Renal Care, seek approval to transfer their 100% membership interest to eight (8) new members.

Westchester Center for Renal Care is an existing nine (9) station end-stage renal treatment center on the basement level of Westchester Center for Rehabilitation and Nursing located at 10 Claremont Avenue in Mount Vernon (Westchester County). It is anticipated that the project will result in an additional 8.6 FTEs in the first year and 14.2 FTEs by the third year of operation. There will be no programmatic changes as a result of this request.

**Character and Competence**

The following table details the proposed change in membership interests:

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Membership Interest Proposed by this Application</b>
Michael P. Melnicke	50.00%	---
Samuel Strulovitch	50.00%	---
Jonathan Bleir (Manager)	---	47.20%
Joshua Peckman (Manager)	---	14.50%
Morton Kleiner	---	14.00%
Henry Halpert	---	8.42%
Bruce Peckman	---	6.9%
Tovah Bane	---	4.5%
Moshe Bain	---	2.5%
Jay Gold	---	2.0%

Mr. Bleier is the Chief Financial Officer of Highfield Gardens Care Center, a 200-bed residential health care facility located in Great Neck. He holds a membership interest in that facility and several other RHCs, as well as an ambulance company. Mr. Joshua Peckman is Assistant Administrator of Westchester Center for Rehabilitation and Nursing. His responsibilities include oversight of the overall operation of the nursing home to ensure the needs of the residents are met. Dr. Kleiner is an Internist/Nephrologist with over 40 years of experience. Currently, he is president of a dialysis facility in Staten Island and prior to that, he had been employed at Staten Island University Hospital as Chairman of Medicine. Dr. Kleiner also holds membership interest in several health-related companies. Mr. Halpert is President of Highfield Gardens Care Center, one of two facilities in which he has membership interest. In addition, he is a licensed EMT and the CEO/part-owner of an ambulance company. Mr. Bruce Peckman is the Chief Operating Officer of Highfield Gardens Care Center and holds membership interest in two

RHCFss. Recently retired, Mr. Bane had a nearly 60-year career in education where he worked as a teacher, mentor, and coordinator of Judaic Studies. Moshe Bain is a Licensed Nursing Home Administrator and Administrator of Highfield Gardens Care Center where he has been employed for over 10 years. In that position, he has responsibility for the operational oversight and fiscal management of the facility. Mr. Gold is the Director of Operations for a management company. He oversees housekeeping and laundry services as well as all facility related construction and maintenance projects.

Disclosure information was similarly submitted and reviewed for the Medical Director, Majed M. Samarneh, MD. Dr. Samarneh is a practicing physician (Attending Hospitalist) who is board-certified in Internal Medicine and Nephrology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the two proposed individual members 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.

*Highfield Gardens Care Center was fined \$6,000 pursuant to a Stipulation and Order dated June 18, 2008 for surveillance findings on August 8, 2007 related to Quality of Care, Pressure Ulcers and Accidents.*

#### Conclusion

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

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement (MIPA) which will become effective upon PHHPC approval of this CON. The terms of the agreement are as summarized:

Date:	September 14, 2011
Seller:	Samuel Strulovitch and Michael Melnicke.
Purchaser:	Bruce Peckman, Jonathan Bleier, Henry Halpert, Joshua Peckman, Moshe Bain, Tovah Bain and Robert Bleier. On February 25, 2015 Robert Bleier assigned his rights in the MIPA to Morton Kleiner and Jay Gold.
Acquired Assets:	Beneficial owners free and clear of any and all security interests, liens, adverse claims, warrants, options and other purchase rights and other encumbrances of any nature whatsoever. The interest shall constitute one hundred (100%) percent of the membership interest.
Purchase Price:	\$100 paid at closing

### Assignment and Assumption Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the assignment of Robert Bleier's interest in the Membership Interest Purchase Agreement (MIPA) to Morton Kleiner and Jay Gold, as shown below:

Date:	February 25, 2015
Assignor:	Robert Bleier
Assignee:	Morton Kleiner and Jay Gold
MIPA Assigned:	Assigns, transfers and releases to all Assignees all of the Assignor's right, title and interest as a Buyer under the purchase agreement with respect to the Interests.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement or understanding between the applicant and transferor to the contrary, to be liable and for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller 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 Seller of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

### Consulting and Administrative Services Agreement

The applicant has submitted a draft Consulting and Administrative Services Agreement (CASA) with KMK Consulting Corp. (KMK), which is summarized as follows:

Provider/Administrator:	KMK Consulting Corp.
Licensed Operator:	MS Acquisitions III, LLC d/b/a Westchester Center for Renal Care
Services Provided:	Assist in developing: annual budgets, accounting procedures and controls; and staffing schedules. Assist in developing and updating policies and procedures manuals; vendor negotiations and contracts, and purchase of supplies and equipment. Assist in recruiting clinical services, utilization and quality assurance programs and advice on the requirements of management information systems. On behalf of the operator prepare patient billing and administer controls for recording collections. Provide advice on business development, provider relations and integration. Assist in implement systems, regulatory compliance and reviews, in-service education, and reporting.
Term:	10 years
Fee:	\$75,000 per year plus another \$48,000 per year for medical billing and collection which will be subcontracted to Island Computer Billing Service, Inc.



While KMK Consulting Corp. will provide all of the above services; the Licensed Operator will retain ultimate authority, responsibility, and control for the operations.

Morton Kleiner is the owner of KMK, the consulting and administrative services agreement provider, and is also a member of the proposed operator.

#### Medical Billing and Collection Services Agreement

The applicant has submitted a draft Medical Billing and Collection Services Agreement related to KMK's sub-contracting the billing and collection functions covered under their CASA to Island Computer Billing Service Inc. (ICBS), which is summarized as follows:

Provider:	Island Computer Billing Service Inc.
Administrator:	KMK Consulting Corp
Services Provided:	Perform the functions and duties as required by section 1 (i) of the CASA. On behalf of the operator prepare patient billing and administer controls for recording collections.
Term:	1 year automatically renewable each year – terminated with 60 day notice
Fee:	\$43,200 per year (shall be reviewed and adjusted to reflect fair market value as agreed upon by KMK and ICBS)

Island Computer Billing Service Inc. will provide the above services; the Licensed Operator will retain ultimate authority, responsibility, and control for the operations.

#### Lease Rental Agreement

The applicant has submitted an executed Lease and Sub-Lease Rental Agreement for the site, the terms of which are summarized below:

Date:	September 14, 2011
Landlord:	Westchester Gardens Realty, LLC
Lessee:	Parkview Operating Co. LLC d/b/a Westchester Center for Rehabilitation and Nursing
Premises:	10 Claremont Avenue, Mount Vernon, New York 10550
Term:	35 years from commencement date –ending April 2036 (rent is \$1,407,425 per year)
Sub-landlord	Parkview Operating Co. LLC d/b/a Westchester Center for Rehabilitation and Nursing
Sub-lessee:	MS Acquisitions III, LLC d/b/a Westchester Center for Renal Care.
Premises	4,018 square feet – cellar level of 10 Claremont Avenue, Mount Vernon, NY 10550
Terms/Rental:	10 years (beginning January 1, 2014) along with one (1) renewal option of 10 years; rent at \$160,000 per year
Provisions:	Included in the lease.

The applicant has stated that the agreements are non-arm's length, as there is common ownership between the real property owner (Westchester Gardens Realty, LLC), the lessee/sub-Landlord (Parkview Operating Co, LLC), and the sub-lessee (MS Acquisitions III, LLC d/b/a Westchester Center for Renal Care. The applicant has provided documentation from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

## Operating Budget

The applicant has submitted the facility's Year One and Three operating budgets, in 2015 dollars:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$130,350	\$220,000
Medicare Fee-For-Service	521,675	880,275
Medicare Managed Care	521,675	880,275
Commercial Fee-For-Service	171,105	220,220
Bad Debt	<u>(40,237)</u>	<u>(66,023)</u>
Total Revenues	\$1,304,568	\$2,134,747
Expenses:		
Operating	\$1,090,888	\$1,697,772
Capital	<u>200,000</u>	<u>200,000</u>
Total	\$1,290,888	\$1,897,772
Net Income	\$13,680	\$236,975
Utilization (Treatments)	4,891	8,003
Cost Per Treatment	\$263.93	\$237.13

Per visit operating expenses are expected to decline in Year Three as total general and administrative expenses increase slightly from \$352,932 to \$367,034, while the number of visits increase from 4,891 to 8,003—thus reducing the average cost per visit from \$263.93 to \$237.13. Included in general and administrative expenses are: accounting and management fees, insurance, office, rent, and depreciation expenses. Expense assumptions are based the current and proposed operator's experience.

The breakeven point is expected at about 84.4% in the third year.

Utilization by payor source for the Years One and Three, are summarized below:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-MC	474	9.7%	800	10.0%
Medicare-FFS	1,897	38.8%	3,201	40.0%
Medicare-MC	1,897	38.8%	3,201	40.0%
Commercial-FFS	<u>623</u>	<u>12.7%</u>	<u>801</u>	<u>10.0%</u>
Total	4,891	100.0%	8,003	100.0%

Utilization and revenue assumptions are based on the current and proposed operator's experience. The assumptions appear reasonable.

### Capability and Feasibility

The \$100 purchase price will be provided from the members. There are no project costs associated with this application.

Working capital requirements are estimated at \$316,295 based upon two months of Year Three expenses, which will be contributed from the members' personal resources. BFA Attachment A is the members' net worth summary, which shows sufficient liquid resources to cover the equity requirement.

The submitted budget projects a net income of \$13,680 and \$236,975 in Years One and Three, respectively. Revenues are based on current reimbursement methodologies. BFA Attachment B is Westchester Center's Pro Forma Balance Sheet which shows operations will start off with \$552,915 in equity.

BFA Attachment C is Parkview Operating Co. d/b/a Westchester Center for Rehabilitation and Nursing's certified financial statements for 2014 and from May 1, 2013, which shows the facility had an average operating net income of \$1,095,427, maintain a positive working capital position, and closed 2014 with \$1,364,400 in members' equity.

BFA Attachment D is the 2014 and 2103 financial summary for Island Rehabilitative Services Corp. and Affiliates (IRSC & Affiliates), which shows the entity had positive working capital, negative equity, and generated operating surpluses in 2013 and 2014 of \$990,200 and \$1,606,334, respectively. Morton Kleiner has interest in IRSC & Affiliates.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Pro-Forma Balance Sheet Westchester Center
BFA Attachment C	Parkview Operating Co. LLC d/b/a Westchester Center for Rehabilitation and Nursing May 1, 2013 through December 31, 2013 and 2014 Financial Statements
BFA Attachment D	Financial Summary for Island Rehabilitative Service Corp. and Affiliates

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 6<sup>th</sup> day of August, 2015 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 of 100% membership interest from two (2) withdrawing members to eight (8) new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151169 E

Westchester Center for Renal Care

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed Consulting Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department of Health. (BFA)
4. Submission of an executed Medical Billing and Collection Services Agreement, acceptable to the Department of Health. (BFA)
5. Submission of Medicaid Affidavit that is acceptable to the Department. [CSL]
6. Submission of an executed Consulting and Administrative Services Agreement that is acceptable to the Department. [CSL]
7. Submission of an executed Amended and Restated Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
9. Submission of site control that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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*.



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Beth Israel Homecare, Inc. d/b/a American Homecare in NY  
Address: New York  
County: New York  
Structure: For Profit Corporation  
Application Number: 1972-L

Description of Project:

Beth Israel Homecare, Inc., d/b/a American Homecare in NY, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Svetlana Mordechaev owns 100 shares and Diana Rubinov owns 100 shares.

The Board of Directors of Beth Israel Homecare, Inc. d/b/a American Homecare in NY comprises the following individuals:

Svetlana Mordechaev, Chairperson Vice President, Da Mor Imperial, Inc. PCA, All Metro Health Care (2002 – 2007)	Diana Rubinov, Esq., Treasurer Private Practice
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 164 20<sup>th</sup> Street, Suite 2-D, Brooklyn, New York 11232:

New York Bronx	Kings Richmond	Queens Nassau
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Housekeeper
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A Certificate of Good Standing has been received for Diana Rubinov, Esq.

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities/agencies.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 25, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Savi's Homecare Services, Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2217-L

Description of Project:

Savi's Homecare Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares, which are owned solely by Savitri McCrea.

The Board of Directors of Savi's Homecare Services, Inc. comprises the following individuals:

Savitri McCrea, Director  
Phlebotomy Technician and Nurse Technician  
Director of Operations, Savi's Homecare Services (companion care agency)  
Manager, Federal Express  
Owner, Real Estate and Mortgage Consultant, SRA 1 Enterprise

Jennifer Birbahadur, Assistant Director  
Assistant Director, Savi's Homecare Services (companion care agency)

Siedah McCrea, Secretary  
Human Resources Assistant, Savi's Homecare Services (companion care agency)

Radica Persaud, CNA, Treasurer  
CNA, Bronx Center for Rehabilitation and Healthcare

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

The New York State Nurse Aide Registry indicates no issues with the certification of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1811 Victor Street, Bronx, New York 10462-3509:

Bronx	Kings	Queens
Richmond	New York	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 16, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Samaritan Services, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2251-L

Description of Project:

Samaritan Services, Inc, a New Jersey for-profit corporation authorized to do business in New York State, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 100 shares of stock which are owned solely by Phyllis Ross.

The Board of Directors of Samaritan Services, Inc. is comprised of the following individuals:

Phyllis Ross, RN - President  
President/CEO/Director of Nursing, Samaritan Services, Inc. (staff agency)

Binta Ross – Secretary  
Human Resource Director, Samaritan Services, Inc. (staffing agency)

Carol Adams – Treasurer  
President, Truth Accounting & Bookkeeping Services, Inc.

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

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 25 Chapel Street, Suite 1201, Brooklyn, New York 11201:

Kings                  Queens                  Bronx                  Richmond                  New York                  Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Homemaker	Medical Social Services
Nutrition		

The State of New Jersey indicated that they have no record of any complaints filed against Samaritan Services, Inc. and their registration is currently active.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 15, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Epic Home Care, LLC  
Address: Croton on Hudson  
County: Westchester  
Structure: Limited Liability Company  
Application Number: 2258-L

Description of Project:

Epic Home Care, LLC, a to-be-formed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed members of Epic Home Care, LLC are the following individuals:

Lizer Jozefovic, NHA – 50%  
Managing Partner, Sky View Rehabilitation and Health Care Center

Mark Neuman – 50%  
Financial Controller, Long Island Care Center

Both of the above named individuals are affiliated with the following residential health care facilities:

Middletown Park Rehabilitation & Health Care Center  
Putnam Nursing & Rehabilitation Center  
Salem Hills Rehabilitation and Nursing Center  
Sky View Rehabilitation and Health Care Center  
Waterview Hills Rehabilitation and Health Care Center  
Chapin Hill at Red Bank (New Jersey)  
West Broward Rehabilitation and Healthcare (FKA West Broward Care Center) (Florida)  
Lackawanna Health and Rehabilitation Center (Pennsylvania)

The Bureau of Professional Credentialing has indicated that Lizer Jozefovic, NHA license #04426, holds a Nursing Home Administrator license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. This license is currently in involuntary inactive status.

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

The applicant proposes to serve the residents of the following counties from an office located at 1280 Albany Post Road, Croton on Hudson, New York 10520:

Westchester	Putnam	Rockland	Sullivan
Dutchess	Ulster	Orange	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Middletown Park Rehabilitation & Health Care Center  
Putnam Nursing & Rehabilitation Center (July 16, 2014 – present)  
Salem Hills Rehabilitation and Nursing Center  
Sky View Rehabilitation and Health Care Center  
Waterview Hills Rehabilitation and Health Care Center  
Chapin Hill at Red Bank (New Jersey) (October 2013 - October 2014)  
West Broward Rehabilitation and Healthcare (Florida) (June 1, 2010 – present)  
Lackawanna Health and Rehabilitation Center (Pennsylvania) (2011- present)

The information provided by the New York State Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the New Jersey Department of Health indicated that the residential health care facility reviewed is currently operational and the facility is currently in compliance with all applicable codes, rules and regulations; with no enforcement or administrative actions against the facility during the specified time period. The State of New Jersey will only track records for a one year period and therefore provided the enforcement review for the period of October 2013 through October 2014.

**West Broward Rehabilitation and Healthcare:** The information provided by the State of Florida indicated that West Broward Rehabilitation and Healthcare was fined two thousand five hundred dollar (\$2,500.00) pursuant to a settlement agreement was reached November 29, 2011 imposed for late application submission under Florida Statutes Sections 408.806(2) and 400.121(1). In addition, the State of Florida indicated that the residential health care facility entered into a payment plan agreement dated September 9, 2010 to refund Medicaid overpayments totaling \$389,182.51. The State of Florida indicated that West Broward Rehabilitation and Healthcare currently has a valid license and is in compliance with all applicable Codes, Rules and Regulations.

**Lackawanna Health and Rehabilitation Center:** The information provided by the Pennsylvania Department of Health indicated that a civil money penalty in the amount of sixteen thousand two hundred fifty dollars (\$16,250.00) was taken against Lackawanna Health and Rehabilitation Center pursuant to deficiencies cited during surveys conducted on February 4, 2011 and August 4, 2011. The State of Pennsylvania indicated that Lackawanna Health and Rehabilitation Center currently has a valid license and is in compliance with all applicable Codes, Rules and Regulations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 15, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Curatio Health Care Systems, LLC d/b/a Curatio Home Care Services  
Address: Bronx  
County: Bronx  
Structure: Limited Liability Company  
Application Number: 2265-L

Description of Project:

Curatio Health Care Systems, LLC d/b/a Curatio Home Care Services, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of Curatio Health Care Systems, LLC d/b/a Curatio Home Care Services comprises the following individuals:

Dwayne L. Samuel, RN, Esq., – 70.288%  
Visiting IV RN/Nurse Clinician, Acute Care Experts, Inc.

Keith Robinson, RN, FNP – 23.753%  
Nurse Practitioner, Department of Veterans Affairs  
Nurse Practitioner, Lower Eastside Service Center

Koi Germany, RN – 3.283%  
Clinical Team Manager, MJHS Hospice and Palliative Care, Inc.

David Medina, R.Ph – 2.297%  
Hospice Pharmacy Director, Avanti Healthcare

Artur Davidov, RN – 0.377%  
Registered Nurse Care Manager, SeniorBridge Home Care  
Community Health Nurse, Alternate Staffing  
HHA Instructor, Access Institute

The Office of the Professions of the State Education Department indicates no issues with licenses of the health care professionals associated with this application.

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

A Certificate of Good Standing has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 1231 Lafayette Avenue, Suite L2, Bronx, New York 10474:

Bronx                      Kings                      Queens                      Richmond                      New York                      Westchester

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: April 29, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Caresense Health, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2273-L

Description of Project:

Caresense Health, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Caresense Health, LLC comprises of the following individuals:

Gabriel Dalfin- 50%  
Manager – Caresense Health LLC

Affiliations

CareSense Health LLC d/b/a CareSense Home Health, PA (2011-present)  
CareSense Health LLC d/b/a CareSense Home Care, PA (2011 – present)  
CareSense Health LLC, NJ (2012-present)

Steven Kizelnik- 50%  
Manager – Caresense Health LLC

Affiliations

CareSense Health LLC d/b/a CareSense Home Health, PA (2011-present)  
CareSense Health LLC d/b/a CareSense Home Care, PA (2011 – present)  
CareSense Health LLC, NJ (2012-present)

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

The applicant proposes to serve the residents of the following counties from an office to be located in Kings County.

Kings	Queens	New York	Bronx	Nassau
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Housekeeper	Occupational Therapy
Speech-Language Pathology	Homemaker	Medical Social Services

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

CareSense Health LLC d/b/a CareSense Home Health, PA (2011-present)  
CareSense Health LLC d/b/a CareSense Home Care, PA (2011 – present)  
CareSense Health LLC, NJ (2012-present)

The information provided by the States of New Jersey and Pennsylvania indicated that the applicant is currently in compliance with all applicable codes, rules, and regulations and that they have not taken any enforcement or administrative actions against the agencies.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: April 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2298-L

Description of Project:

Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Review of the application indicates that Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669 is a franchise.

The applicant has authorized 200 shares of stock which are owned as follows:

Bernardita Punla – 100 shares                      Anthony Punla – 100 shares

The Board of Directors of Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669 is comprised of the following individuals:

Bernardita Punla, RN – President  
President/CEO - Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669  
Registered Nurse – St. Barnabas Medical Center

Anthony Punla – Board Member  
Office Manager - Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669

Reginald Punla – Board Member  
Community Relations Director - Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669

Romeo Punla – Board Member  
Care Director - Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669

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

The State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs, indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of Richmond County from an office located at 55 Austin Place, Suite 4P, Staten Island, New York 10304.

The applicant proposes to provide the following health care services:

Nursing                      Personal Care                      Homemaker                      Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: April 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Warm Touch Home Care, LLC  
Address: Rego Park  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2376-L

Description of Project:

Warm Touch Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Warm Touch Home Care, LLC comprises the following individual:

Roman Fayzibayev, RN – 100%  
Staff Registered Nurse, Prime Home Care

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

The Office of the Professions of the State Education Department indicates no issues with the Roman Fayzibayev's licensure as a Registered Nurse.

The applicant proposes to serve the residents of the following counties from an office located at 99-34 65th Ave., Rego Park, NY 11374:

Queens            Kings            Bronx            New York            Richmond            Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 16, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Amazing Grace Home Care Solutions, LLC  
Address: Latham  
County: Albany  
Structure: Limited Liability Company  
Application Number: 2382-L

Description of Project:

Amazing Grace Home Care Solutions, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Amazing Grace Home Care Solutions, LLC comprises the following individual:

Augustus Amasha – 100%  
Supervisor, Amazing Grace Home Care Solutions, Companion Care  
President/Owner, Amazing Grace Medical Transportation

The Board of Directors of Amazing Grace Home Care Solutions LLC comprises the following individuals:

Augustus Amasha – President  
Supervisor, Amazing Grace Home Care Solutions, Companion Care  
President/Owner, Amazing Grace Medical Transportation

Adeyemi Bennett, LPN – Vice-President  
Licensed Practical Nurse, Hudson Park Nursing and Rehabilitation Center  
Licensed Practical Nurse, The Spring Nursing and Rehabilitation Center

Cynthia Jackson, RN - Treasurer  
Clinical Documentation Improvement Specialist, Albany Medical Center

Denise Angle, LPN - Secretary  
Licensed Practical Nurse, Dialysis Center, Inc.  
Licensed Practical Nurse/Hemodialysis, Fresenius Medical Care

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

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 952 Troy Schenectady Road, Suite 103, Latham, New York 12110:

Albany	Schenectady	Rensselaer
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 26, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Reliable Home Care Service Corp.  
Address: Glendale  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2386-L

Description of Project:

Reliable Home Care Service Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Reliable Home Care Service Corp. has authorized 200 shares of stock, which are owned as follows: Malgorzata Krzyzanowska owns 100 shares and Alex Ryzman owns 100 shares.

The Board of Directors of Reliable Home Care Service Corp. comprises the following individuals:

Malgorzata Krzyzanowska, President/Treasurer  
Owner/Manager, Margo's Maids

Alex Ryzman, Secretary  
Instructor, NYC Department of Health/Health Academy

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

The applicant proposes to serve the residents of the following counties from an office located at 74-18 64<sup>th</sup> Lane, Glendale, New York 11385:

Bronx	Kings	Queens
Richmond	New York	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 25, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Long Island Licensed Home Health Care Agency, LLC  
Address: Flushing  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2390-L

Description of Project:

Long Island Licensed Home Health Care Agency, LLC, a proposed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Long Island Licensed Home Health Care Agency, LLC will be the following individual:

Michael Benenson, NHA  
Managing Director, FilBen Development, LLC  
Chairman of the Board, Care Next Insurance, Inc.  
President, Benenson and Associates

Affiliations

Flushing Manor Dialysis Center (January 2008 – January 31, 2015)  
Flushing Manor Geriatric Center (January 1996 – January 31, 2015)  
Flushing Manor Nursing Home (July 1, 2008 – January 31, 2015)  
Flushing Manor Care Center (1976 – January 31, 2015)  
Queens Long Island Certified Home Health Care (June 1, 2014 – present)  
Medford Hamlet ALP (July 1, 2012 – present)  
Walkill Hamlet, LLC (January 1, 2015 – present)  
Hudson Valley Home Care, LLC (June 2015 – present)

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

The Bureau of Professional Credentialing has indicated that Michael Benenson, NHA license #00050, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken any disciplinary action against this individual or his license.

The applicant proposes to serve the residents of Queens County from an office located at 35-15 Parsons Boulevard, Flushing, New York 11354.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Flushing Manor Dialysis Center (2008 – 2015)  
Flushing Manor Geriatric Center (2008 – 2015)  
Flushing Manor Nursing Home (2008 – 2015)

Flushing Manor Care Center (2008 – 2015)  
Queens Long Island Certified Home Health Care (June 2014 – present)  
Medford Hamlet ALP (April 2014 – present)  
Medford Hamlet Home Care (April 2014 – present)  
Walkkill Hamlet, LLC (January 2015 – present)  
Hudson Valley Home Care, LLC (June 2015 – present)

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostics & Treatment Centers has indicated that the dialysis center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July 2, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Mason & Bugayeva Home Care Services, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2398-L

Description of Project:

Mason & Bugayeva Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Mason & Bugayeva Home Care Services, Inc. has authorized 200 shares of stock, which are owned solely by Benjamin Mason.

The Board of Directors of Mason & Bugayeva Home Care Services, Inc. is comprised of the following individuals:

Benjamin Mason, MD, Chairperson/President/Treasurer  
Medical Doctor/Ophthalmologist, Greater New York Ophthalmology Care, PLLC

Affiliation:

Owner/President, Mason ESC, LLC d/b/a Mason Eye Surgery Center (2013 – Present)

Shahana Begum, Vice President/Secretary  
Surgical Coordinator, Greater New York Ophthalmology Care, PLLC

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

The Office of the Professions of the State Education Department, The New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 151 Manhattan Avenue, Apartment 1A, Brooklyn, New York 11206:

Kings	Bronx	Queens	New York
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Medical Social Services	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Mason ESC, LLC d/b/a Mason Eye Surgery Center (2013 – Present)

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 24, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Inspired Inhouse Health Care, Inc.  
Address: East Elmhurst  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2408-L

Description of Project:

Inspired Inhouse Health Care, Inc., a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Lisa Catlin.

The Board of Directors of Inspired Inhouse Health Care, Inc. comprises the following individuals:

Lisa Catlin, RN, President  
Clinician/Supervising Nurse, Complete Home Care Services, Inc.

Doroty Palmer, Vice President  
Retired

Marie Germana, LPN, Secretary  
Retired

Antoine Catlin, Treasurer  
NY State Certified Loan Originator  
Loan Originator, United Northern Mortgage Bank

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

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2732 Ericsson Street, East Elmhurst, New York 11369:

Queens	Bronx	Kings
Richmond	New York	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Medical Social Services	Nutrition	Homemaker
Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 18, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Care for Seniors, LLC d/b/a Home Instead Senior Care  
Address: Staten Island  
County: Richmond  
Structure: Limited Liability Company  
Application Number: 2420-L

Description of Project:

Care for Seniors, LLC d/b/a Home Instead Senior Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Care for Seniors, LLC has proposed to operate as a Franchisee of Home Instead, Inc.

The proposed membership of Care for Seniors, LLC d/b/a Home Instead Senior Care comprises the following individual:

Jacqueline T. Reiter, LMSW, 100%  
Owner/Operator, Care for Seniors, LLC d/b/a Home Instead Senior Care (Companion Care, 2001 - Present)

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2153 Richmond Avenue, Suite 103, Staten Island, New York 10314:

Richmond	Kings	New York
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Accolade Care, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2421-L

Description of Project:

Accolade Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock with Adebisi Oyewo as the sole shareholder.

The Board of Directors of Accolade Care, Inc. comprises the following individuals:

Adebisi Oyewo, HHA, President  
Human Resources Manager, Signature Care, LLC

Xiu Qun Xiong, RN, Vice President  
Community Health Nurse, Village Care  
Supervisory Nurse, CPC Home Attendant Program

Matinat Oyewo, HHA, Secretary  
Health Insurance/Claims Specialist, Professional Physical Therapy

Olaitan Oyewo, HHA, Treasurer  
Registered, Veterinary Technology  
Veterinary Technician, Banfield Hospital

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

The New York State Home Care Registry indicates no issues with the licenses of the healthcare professionals associated with this application.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 573 Cary Avenue, Staten Island, New York 10310:

New York	Kings	Queens
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 15, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: JJ Wells Company, LLC d/b/a Nurse Next Door Manhattan  
Address: New York  
County: New York  
Structure: Limited Liability Company  
Application Number: 2422-L

Description of Project:

JJ Wells Company, LLC d/b/a Nurse Next Door Manhattan, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

JJ Wells Company, LLC has proposed to operate as a Franchisee of Nurse Next Door Home Healthcare Services (USA) Inc.

The sole member of JJ Wells Company, LLC d/b/a Nurse Next Door Manhattan is The JJ Wells Company d/b/a Nurse Next Door Wayne.

The JJ Wells Company d/b/a Nurse Next Door Wayne has authorized 10,000,000 shares of stock, which are owned as follows: The JJ Wells Company Retirement Plan owns 99,236.54. The remaining 9,900,763.46 shares remain unissued.

The sole trustee of The JJ Wells Company Retirement Plan is Jennifer Wells.

Jennifer Wells

Owner/President, The JJ Wells Company d/b/a Nurse Next Door Wayne (New Jersey)

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

The applicant proposes to serve the residents of New York County from an office located at 7 Park Avenue, #2J, New York, New York 10016.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A 7 year review of the following agency was performed as part of this review (unless otherwise noted):

The JJ Wells Company, LLC d/b/a Nurse Next Door Wayne (New Jersey, 2013 – Present)

The New Jersey Office of the Attorney General indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of the residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 22, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Bantam Enterprises, Inc. d/b/a Right at Home  
Address: White Plains  
County: Westchester  
Structure: For-Profit Corporation  
Application Number: 2426-L

Description of Project:

Bantam Enterprises, Inc. d/b/a Right at Home, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Bantam Enterprises, Inc. proposes to operate as a Franchisee of Right at Home.

The applicant has authorized 200 shares of stock, which are owned as follows:

Louis M. Giampa, CNA – 100 Shares  
President/CEO, Right at Home (Companion Care Company)

100 shares remain unissued

The Board of Directors of Bantam Enterprises, Inc. d/b/a Right at Home comprises the following individuals:

Louis M. Giampa, CNA – President/Treasurer (Previously Disclosed)	Chiarina Giampa – Secretary Teacher, PS 83 Agency Administration, Right at Home
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Nurse Aide Registry revealed that the individual is certified as a CNA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 180 South Broadway, Suite 310, White Plains, New York 10605:

Westchester	Rockland	Orange	Putnam
Sullivan	Ulster	Dutchess	Nassau
Suffolk	Bronx		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: May 15, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Golden Promises Home Care LLC  
Address: Goshen  
County: Orange  
Structure: Limited Liability Company  
Application Number: 2428-L

Description of Project:

Golden Promises Home Care LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Golden Promises Home Care LLC is:

Michelle Castillo, CNA – 100%  
Owner/Director, Golden Promises Home Care LLC

The Board of Directors of Golden Promises Home Care LLC is comprised of the following individuals:

Michelle Castillo, Board President/Treasurer  
Previously Disclosed

Cesar A. Castillo, Vice President/Secretary  
Assistant Director, Golden Promises Home Care LLC  
Police Officer/Detective Squad, NYPD

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

A search of the individual named above on the New York State Nurse Aide Registry revealed that the individual is certified as a CNA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 36 St. John Street, Suite 101, Goshen, New York 11366:

Westchester	Rockland	Orange	Putnam
Sullivan	Ulster	Dutchess	Nassau
Suffolk	Greene		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 16, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: KB Homecare, Inc. d/b/a Visiting Angels  
Address: Rye  
County: Westchester  
Structure: For-Profit Corporation  
Application Number: 2431-L

Description of Project:

KB Homecare, Inc. d/b/a Visiting Angels, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

KB Homecare, Inc. proposes to operate as a Franchisee of Living Assistance Services, Inc.

The applicant has authorized 200 shares of stock, which are owned as follows:

Kathleen L. Moynihan – 0.75 shares

Barbara Stern – 0.25 shares

Kathleen Moynihan and Barbara Stern TEE FBO  
KB Homecare, Inc. Profit Sharing Plan Trust FBO  
Kathleen Moynihan Rollover Account -74.25 shares

Kathleen Moynihan and Barbara Stern TEE FBO  
KB Homecare, Inc. Profit Sharing Plan Trust FBO  
Barbara Stern Rollover Account - 24.75 shares

100 shares remain unissued

Kathleen Moynihan is the sole Trustee of the Kathleen Moynihan and Barbara Stern TEE FBO KB Homecare, Inc. Profit Sharing Plan Trust FBO Kathleen Moynihan Rollover Account.

Barbara Stern is the sole Trustee of the Kathleen Moynihan and Barbara Stern TEE FBO KB Homecare, Inc. Profit Sharing Plan Trust FBO Barbara Stern Rollover Account.

The Board of Directors of KB Homecare, Inc. d/b/a Visiting Angels comprises the following individuals:

Kathleen L. Moynihan – President/Treasurer  
Owner/Director, KB Homecare, Inc.  
(companion care company)

Barbara P. Stern – Vice President/Secretary  
Senior Manager, Alexion Pharmaceuticals, Inc.

Margaret R. Esposito, RN – Board Member  
Unemployed

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

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 23 Oakwood Avenue, Rye, New York 10580:

Westchester

Putnam

The applicant proposes to provide the following health care services:

Nursing  
Homemaker

Home Health Aide  
Housekeeper

Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 16, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Thelus Specialty Care Agency, LLC  
Address: Lindenhurst  
County: Suffolk  
Structure: Limited Liability Company  
Application Number: 2439-L

Description of Project:

Thelus Specialty Care Agency, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Thelus Specialty Care Agency, LLC are the following individuals:

Yelva Jean-Jacques, LPN – 60%  
Retired

Margaret Goldstein, MPA – 40%  
Founder/Director, Delta Scholars Alternative Center  
Chief Executive Administrator, Gotham Career Institute, LLC

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

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 210 South Wellwood Avenue, Lindenhurst, New York 11757-4927:

Suffolk	Nassau	Westchester
Rockland	Queens	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 16, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Caring Connections, LLC  
Address: Monsey  
County: Rockland  
Structure: Limited Liability Company  
Application Number: 2453-L

Description of Project:

Caring Connections, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Caring Connections, LLC are the following individuals:

Leah Lebovits, CEO – 50%

FINRA Series 7, 65, 63

Owner/Operator, Caring Connections, LLC (companion care, 2014 – present)

Registered Sales Assistant, Ameriprise Financial

Ahron Steinberg, EMT, NHA, Operations Manager – 50%

Nursing Home Administrator, Williamsbridge Manor Nursing Home

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

The Bureau of Emergency Medical Services indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of Rockland County from an office located at 16 Farmer Lane, Monsey, New York 10952:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
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The Bureau of Professional Credentialing has indicated that the Licensed Nursing Home Administrator associated with this application holds a license in good standing and the Board of Examiners of Nursing Home administrators has never taken disciplinary action against this individual or his license.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 29, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Centercare Home Care Agency, LLC  
Address: Little Neck  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2470-L

Description of Project:

Centercare Home Care Agency, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of Centercare Home Care Agency, LLC comprises the following individuals:

Zhuowen Huang, RN – 33%  
Care Manager, Agewell New York  
RN, Office of Dr. Yuqing Chen and Dr. Haifan Chen

Chao Li – 33%  
Group Leader and Head of Parenteral Lab, Salus Pharma, LLC

Tsz Chun Cheung – 34%  
Member Services, Agewell New York

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 5743 263<sup>rd</sup> Street, Little Neck, New York 11362:

Queens	New York	Bronx
Kings	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 29, 2015

Licensed Health Care Services Agency  
Character and Competence Staff Review

Name of Agency: Infinite Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2476-L

Description of Project:

Infinite Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Salomon Englander owns 100 shares and the remaining 100 shares are unissued.

The Board of Directors of Infinite Care, Inc. is comprised of the following individuals:

Salomon Englander – President Chief Executive Officer, Infinite Services, Inc.	Bruchie Englander – Secretary/Treasurer Administrative Assistant, Infinite Services, Inc.
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 805 Kent Avenue, Brooklyn, New York 11205:

Kings	Queens	Richmond	New York	Bronx	Nassau
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Housekeeper	Occupational Therapy
Speech-Language Pathology	Homemaker	Medical Social Services

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: April 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Jefferson's Ferry Home Care, Inc.  
Address: South Setauket  
County: Suffolk  
Structure: Not-For-Profit Corporation  
Application Number: 2486-L

Description of Project:

Jefferson's Ferry Home Care, Inc., a proposed not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Jefferson's Ferry Home Care, Inc. will be Long Island Senior Services, Inc., a not-for-profit corporation.

The Board of Directors of Long Island Senior Services, Inc. comprises the following individuals:

<p>George F. Rice, Esq., Chair Attorney/Partner, Spellman Rice Schure Gibbons McDonough Polizzi &amp; Truncale, LLP</p> <p><u>Affiliations:</u> Jefferson's Ferry (1997 – Present) St. Charles Hospital (2002 – 2012) Good Samaritan Hospital (2002 – 2012) St. Catherine of Siena Hospital (2002 – 2012)</p>	<p>John Sini, CPA, Treasurer Partner, Albanese Sini &amp; Reeves, LLP Partner, Sini &amp; Reeves, LLC</p> <p><u>Affiliations:</u> John T. Mather Memorial Hospital (1981 – Present) Jefferson's Ferry (2006 – Present)</p>
<p>Wayne Shattes, Secretary Vice President of Administration, John T. Mather Memorial Hospital</p> <p><u>Affiliations:</u> Jefferson's Ferry (1997 – Present)</p>	<p>James Danowski, CPA, Director Partner, Cullen &amp; Danowski</p> <p><u>Affiliations:</u> John T. Mather Memorial Hospital (2004 – Present) Jefferson's Ferry (2010 – Present)</p>
<p>Vincent P. Basilice, MD, Director Medical Director, The Ophthalmic Center</p> <p><u>Affiliations:</u> Jefferson's Ferry (1997 – Present)</p>	<p>Vivian M. Vilorio-Fisher, Director Retired</p> <p><u>Affiliations:</u> Jefferson's Ferry (1997 – Present)</p>

The Board of Directors of Jefferson's Ferry Home Care, Inc. will comprise the following individuals:

<p>George F. Rice, Esq., Chair Disclosed Above</p>	<p>Vincent P. Basilice, MD, Director Disclosed Above</p>
<p>Vivian M. Vilorio-Fisher, Director Disclosed Above</p>	

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

The Office of Professions of the State Education Department indicates no issues with the licenses of the certified public accountants associated with this application.



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Columbia County Department of Health  
Address: Hudson  
County: Columbia  
Structure: Public  
Application Number: 2648L

Description of Project:

Columbia County Department of Health, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency and a diagnostic and treatment center. Columbia County Department of Health intends to sell its certified home health agency and is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Columbia County from an office located at: 325 Columbia Street, Suite 100, Hudson, NY 12534.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide
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The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 29, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Wavecrest HFA, Inc. d/b/a Wavecrest Home Care  
Address: Far Rockaway  
County: Queens  
Structure: For –Profit Corporation  
Application Number: 2598-L

Description of Project:

Wavecrest HFA, Inc. d/b/a Wavecrest Home Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Wavecrest HFA, Inc. d/b/a Wavecrest Assisted Living Program. The LHCSA and the ALP will have identical membership.

The applicant has authorized 200 shares of stock which are owned solely by Jeffrey Edelman.

The Board of Directors of Wavecrest HFA, Inc. d/b/a Wavecrest Home Care is comprised of the following individual:

Jeffrey Edelman- Chief Executive Officer

Affiliations:

Wavecrest HFA, Inc. (1992-present)  
Parkview HFA, Inc. (2002-present)  
Long Island Living Center, LLC (2012-present)

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

The applicant proposes to serve the residents of Queens County from an office located at 242 Beach 20<sup>th</sup> Street, Far Rockaway, New York 11691.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Long Island Living Center, LLC (2012-present)  
Wavecrest HFA, Inc.  
Parkview HFA, Inc.

Long Island Living Center, LLC was fined \$5,000 pursuant to a stipulation and order dated June 22, 2015 for surveillance findings of March 4, 2015. Deficiencies were found under 18 NYCRR 486.5(a)(4)(v) Endangerment in Resident Services.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.



Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 13, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Parkview HFA, Inc. d/b/a Parkview Home Care  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2599-L

Description of Project:

Parkview HFA, Inc. d/b/a Parkview Home Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Parkview HFA, Inc. d/b/a Parkview Assisted Living Program. The LHCSA and the ALP will have identical membership.

The applicant has authorized 200 shares of stock which are owned solely by Jeffrey Edelman.

The Board of Directors of Parkview HFA, Inc. d/b/a Parkview Home Care is comprised of the following individual:

Jeffrey Edelman- Chief Executive Officer  
Operator/Owner – Parkview HFA, Inc.

Affiliations:

Wavecrest HFA, Inc. (1992-present)  
Parkview HFA, Inc. (2002-present)  
Long Island Living Center, LLC (2012-present)

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

The applicant proposes to serve the residents of Bronx County from an office located at 3200 Bronx Boulevard, Bronx, New York 10467.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Long Island Living Center, LLC (2012-present)  
Wavecrest HFA, Inc.  
Parkview HFA, Inc.

Long Island Living Center, LLC was fined \$5,000 pursuant to a stipulation and order dated June 22, 2015 for surveillance findings of March 4, 2015. Deficiencies were found under 18 NYCRR 486.5(a)(4)(v) Endangerment in Resident Services.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 13, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Woodland Village, LLC d/b/a Fawn Ridge Home Care  
Address: Troy  
County: Rensselaer  
Structure: Limited Liability Company  
Application Number: 2613-L

Description of Project:

Woodland Village, LLC d/b/a Fawn Ridge Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Woodland Village, LLC d/b/a Fawn Ridge Assisted Living. The LHCSA and the ALP will have identical ownership.

The proposed membership of Woodland Village, LLC d/b/a Fawn Ridge Home Care comprises the following individual:

Ruthy Orzel, 100%  
Operator, Woodland Village, LLC d/b/a/ Fawn Ridge Home Care

Affiliations:

Fawn Ridge Assisted Living (2004 – present)

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

The applicant proposes to serve the residents of the following counties from an office located at 2902 Upper Tibbits Avenue, Troy, New York 12180:

Albany	Columbia	Fulton	Rensselaer	Saratoga
Schenectady	Schoharie	Warren	Washington	Dutchess

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Fawn Ridge Assisted Living

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 18, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Universal Health Care, LLC d/b/a At Your Side Home Care Services  
Address: Flushing  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2315-L

Description of Project:

Universal Health Care, LLC d/b/a At Your Side Home Care Services, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Universal Health Care, LLC d/b/a At Your Side Home Care Services was previously approved as a home care services agency by the Public Health Council at its September 19, 2003 meeting and subsequently licensed as 1214L001. At that time it was owned as follows: Zev Solomon – 50% and Robert Muller – 50%.

On May 22, 2013, the Department approved a 90 day notification submitted by Universal Health Care, LLC to transfer 3.33% of membership interest to Miriam Klein and Chaim Klein and 3.34% to Gershon Klein. The purpose of this proposal is to transfer the remaining 90% interest in Universal Health Care, LLC to these individuals.

The members of Universal Health Care, LLC d/b/a At Your Side Home Care comprise the following individuals:

Gershon Klein, Esq – Managing Member – 33.34%  
President/Owner, First Medcare, Inc.  
Owner, Apple Home Care d/b/a Medi Trans  
(Ambulette Service)

Miriam Klein – Managing Member – 33.33%  
Owner, Elm York

Affiliation:

- New York Center for Rehabilitation Care Management, LLC (2005-Present)
- Elm York, LLC (2007 – Present)
- Madison York Rego Park, LLC (2007 – Present)
- Madison York Assisted Living Community, LLC (2007 – Present)
- York Home Care, LLC (2007 – Present)

Chaim Klein, DDS – Managing Member – 33.33%  
Assistant Operator, York Home Care, LLC  
Dentist, CV DDS PC

Affiliations:

- Elm York, LLC (2007 – Present)
- Madison York Rego Park, LLC (2007 – Present)
- Madison York Assisted Living Community, LLC (2007 – Present)
- York Home Care, LLC (2007 – Present)

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

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Universal Health Care, LLC d/b/a At Your Side Home Care Services (May 2013 –Present)
- New York Center for Rehabilitation Care Management, LLC
- Elm York, LLC
- Madison York Rego Park, LLC
- Madison York Assisted Living Community, LLC
- York Home Care, LLC
- First Medicare, Inc.

**Elm York, LLC** was fined one thousand ten dollars (\$1,010.00) pursuant to a stipulation and order dated August 6, 2013 for inspection findings of May 7, 2010 and August 25, 2010 for violations 18 NYCRR Part 487.11(k)(8) – Environmental Standards.

**Madison York Assisted Living Community** was fined one thousand seven hundred and seventy dollars (\$1,770.00) pursuant to a stipulation and order dated April 21, 2014 for inspection findings of February 12, 2013 and April 25, 2013 for violations 18 NYCRR Part 487.7(f)(5) – Medication Management.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the diagnostic and treatment center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the LHCSA reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 141-24 Jewel Avenue, Flushing, New York 12207:

Bronx	Kings	New York	Queens
Richmond	Nassau		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Personal Care	Physical Therapy	Speech Language Pathology
Housekeeper	Homemaker	Occupational Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Platinum Home Health Care Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit  
Application Number: 2373-L

Description of Project:

Platinum Home Health Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Platinum Home Health Care Inc. was previously approved as a home care services agency by the Public Health Council at its November 16, 2007 meeting and subsequently licensed as 1594L001. At that time, the sole shareholder of Platinum Home Health Care Inc. was Alan J. Ginsburg. Subsequently, a change in stock ownership was done to transfer 18 shares (9% of the issued shares) to Eluzer Follman.

The applicant is requesting approval for PHHC Holding Co., Inc. to become the sole shareholder of Platinum Home Health Care, Inc. This transaction will be consummated in two simultaneous steps. Eluzer Follman shall purchase all of the issued and outstanding shares of Platinum Home Health Care, Inc. currently owned by Alan J. Ginsburg. PHHC Holding Co, Inc. will immediately purchase all of the shares from Eluzer Follman such that PHHC Holding Co., Inc. will be the sole owner of the shares of Platinum Home Health Care, Inc.

PHHC Holding Co., Inc. has authorized 200 shares of stock which are owned as follows: Faigy Goldberger owns 10 Shares and the remaining 190 shares are unissued.

The Board of Directors of PHHC Holding Co., Inc. is comprised of the following individual:

Faigy Goldberger  
Owner/ PHHC Holding Co., Inc.  
Vice President/United Staffing Solutions

Platinum Home Health Care Inc. has authorized 200 shares of stock which will be solely owned by PHHC Holding Co., Inc.

The Board of Directors of Platinum Home Health Care, Inc. is comprised of the following individuals:

Mendel Kaff – President  
CEO/Platinum Home Health Care Inc.

Faigy Goldberger – Secretary/Treasurer  
Disclosed above

Moses Freilich – Vice President  
Vice President /Platinum Home Health  
Care Inc.

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



The applicant proposes to continue to serve the residents of the following counties from an office located at 222 52<sup>nd</sup> Street, Brooklyn, NY 11219

Nassau	Bronx	Kings	New York	Queens
Richmond				

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Platinum Home Health Care, Inc (LHCSA)

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

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 13, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Effective Home Care, L.L.C.  
Address: Astoria  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2506-L

Description of Project:

Effective Home Care, L.L.C., a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Effective Home Care, L.L.C. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 3, 2013 meeting and subsequently licensed 2001L001. At that time the members of the LLC were: Michael Kremerov – 10%, Gary Kanovich – 30%, Irina Oleynikova – 30% and Igor Fleysmaker – 30%.

Through two separate Purchase Agreements, Irina Oleynikova will sell her membership to Oleg Chechelnitzsky and Igor Fleysmaker will sell his membership to Greg Fleysmaker. Irina Oleynikova and Igor Fleysmaker will both release their roles as Administrators in the company.

The proposed members of Effective Home Care, L.L.C. comprise the following individuals:

Michael Kremerov, President, CEO – 10%	Gary Kanovich, Vice President, COO – 30%
Oleg Chechelnitzsky, HHA – Administrator and Corporate Secretary – 30%	Greg Fleysmaker, Finance Manager – 30%
Business and Marketing Manager, LDJ International, Inc.	Head of Business Development, Prime Case Funding

Michael Kremerov and Gary Kanovich are exempt from character and competence review due to the fact that they were previously approved by the Public Health and Health Planning Council for this operator.

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

A search of Oleg Chechelnitzsky on the New York State Home Care Registry revealed that the individual is certified as a Home Health Aide and has no convictions or findings.

The applicant proposes to continue to serve the residents of the following counties from an office located at 35-01 30<sup>th</sup> Avenue, Astoria, New York 11103.

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Angel Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2530-L

Description of Project:

Angel Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Angel Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 6, 2011 meeting and subsequently licensed as 1903L001. At that time Angel Care, Inc. was solely owned and operated by Galina Lenyk-Kolotsi, RN.

The applicant has authorized 200 shares of stock, which will be solely owned by Vyacheslav Bizyayev.

The proposed Board of Directors of Angel Care, Inc. comprises the following individual:

Vyacheslav Bizyayev, HHA, President/Secretary  
Owner/President, Serenity Adult Daycare, Inc.

A search of the New York State Home Care Registry indicates that HHA associated with this application is currently certified and has no convictions or findings.

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

The applicant proposes to serve the residents of the following counties from an office located at 251 East 5<sup>th</sup> Street, Unit 1, Suite 1A, Brooklyn, New York 11234:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Medical Equipment and Supplies	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 4, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: HCS Home Care of Westchester, Inc. d/b/a A&J Home Care  
Address: Mount Kisco  
County: Westchester  
Structure: For-Profit Corporation  
Application Number: 2567-L

Description of Project:

HCS Home Care of Westchester, Inc. d/b/a A&J Home Care, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

A & J Home Care, Inc., was previously approved as a home care services agency by the Public Health Council at its November 18, 2005 meeting and subsequently licensed 1416L001. The sole shareholder of A&J Home Care, Inc. is Judith Simon.

Through an Asset Purchase Agreement, HCS Home Care of Westchester, Inc. will purchase all of the assets, properties and rights belonging to A&J Home Care, Inc.

The applicant has authorized 1,000 shares of stock, which are owned as follows:

Jeffrey Shemia – 51 Shares

Agnes Shemia – 49 Shares

900 shares remain unissued.

The Board of Directors of HCS Home Care of Westchester, Inc. d/b/a A&J Home Care is comprised by the following individuals:

Jeffrey Shemia – President  
CEO, Girling Health Care of New York

Agnes Shemia, SLP– Secretary  
Administrator, Home Health Care Services of New York, Inc.

Affiliations:

- Home Health Care Services of New York, Inc. d/b/a HCS
- HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York (July 2012 – Present)

Affiliations:

- Home Health Care Services of New York, Inc. d/b/a HCS
- HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York (July 2012 – Present)

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

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

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Home Health Care Services of New York, Inc. d/b/a HCS
- HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York (July 2012 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 359 East Main Street, Mount Kisco, New York 10549.

Putnam                      Westchester

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide      Personal Care      Homemaker  
Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:    Contingent Approval  
Date:                      May 20, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Willcare, Inc. d/b/a Willcare  
Address: Buffalo  
County: Erie  
Structure: For-Profit Corporation  
Application Number: 2616-L

Description of Project:

Willcare, Inc. d/b/a Willcare, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Willcare, Inc. d/b/a Willcare was previously approved as a home care services agency by the Public Health Council at its May 2, 2008 meeting and subsequently licensed as 1703L001, 1703L002, 1703L003 and 1703L004.

A separate CHHA/LTHHCP CON application # 151118-E applies only to the Litson Certified Care, Inc., d/b/a Willcare CHHA and LTHHCP serving counties in the Lower Hudson Valley. CHHA/LTHHCP CON application # 151119-E has also been submitted to apply only to the Western Regional Health Corporation, d/b/a Willcare CHHA and LTHHCP serving counties in Western New York. In addition, LHCSA application # 2616-L has been submitted to apply only to the Litson Health Care, Inc., d/b/a Willcare LHCSA serving the Lower Hudson Valley, and LHCSA application # 2617-L has been submitted to apply only to the Willcare, Inc., d/b/a Willcare LHCSA serving Western New York. All four applications are being presented together for this Public Health and Health Planning Council meeting agenda.

The current proposal seeks approval for National Health Industries, Inc., a proprietary business corporation, to become the new parent corporation and new 100% sole stockholder of Bracor, Inc. Since the parent corporation and 100% sole stockholder of National Health Industries, Inc. is Almost Family, Inc., a publicly-traded proprietary business corporation, this proposal also seeks approval for Almost Family, Inc., to become the new grandparent corporation and ultimate controlling entity and stockholder of Bracor, Inc.

The direct corporate operator of the four (4) LHCSA locations serving Western New York will remain Willcare, Inc. d/b/a Willcare, the parent corporation will remain Bracor, Inc. d/b/a Willcare, as was previously approved by the Public Health Council. The new incoming great-grandparent corporation and controlling entity will now be National Health Industries, Inc., and the new incoming great-great-grandparent corporation and ultimate controlling entity will now be Almost Family, Inc. (Attachment A – Before and After Organizational Charts)

National Health Industries, Inc., a proprietary business corporation formed in Kentucky, is a wholly owned subsidiary of Almost Family, Inc., a publicly-traded proprietary business corporation formed in Delaware. Almost Family, Inc. owns 100% of the stock of National Health Industries, Inc. Almost Family, Inc., is authorized to issue 25,000,000 shares of common stock and 2,000,000 shares of preferred stock. Of the 25,000,000 shares of common stock, Almost Family, Inc., currently has 9,480,331 shares issued and outstanding, 94,000 shares held as treasury shares, and 15,425,669 shares unissued. Of the 2,000,000 shares of preferred stock, Almost Family, Inc., currently has no shares issued and outstanding, or held as treasury shares. All 2,000,000 shares of preferred stock are currently unissued. The 9,480,331 shares of issued and outstanding common stock are currently held by 281 shareholders of record and approximately 1500 additional shareholders owning stock through brokerage firms. The stockholders of Almost Family, Inc., are a diverse group of owners including individuals, private investment funds, and mutual funds. Shares of Almost Family, Inc. held by each fund are for the benefit of the fund's investors. Each fund's percentage of ownership in the corporation will vary from time to time.

Both mutual funds and private investment funds are required by the Securities and Exchange Commission (SEC) to disclose direct or indirect stock ownership of greater than 5% of a publicly traded corporation's outstanding stock. The applicant confirms that for SEC reporting purposes, two families of funds, FMR, LLC (Fidelity), and North Tide Capital, LLC, have filed disclosures with the SEC indicating they each possesses dispositive authority for greater than 10% of the outstanding shares of Almost Family, Inc., stock. Almost Family, Inc., has reviewed the relationship these two Limited Liability Company (LLC) family of funds has with the Almost Family, Inc. corporation, and has determined that, although each LLC family of funds is a greater than 10% owner of the corporation's stock, neither has any day-to-day role in the management activities of the corporation, neither has designated representation on the Board of Directors of the corporation, and neither has any control or input into any of the health care operations within the Almost Family, Inc. corporate structure. Pursuant to Delaware law, all affairs of Almost Family, Inc., are managed by, or under the direction of, the corporation's Board of Directors, elected annually by shareholder vote. The make-up of the current Board of Directors has remained unchanged since 2004, and the appointed Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer have all remained constant since 2002. In addition, anti-takeover provisions in the corporation's By-Laws, including advance notice requirements for Board of Directors nominations and any shareholder proposals, would discourage any one shareholder from assuming control of the corporation and any of its operations. Therefore, the applicant has determined that for this proposal, the governing body of Almost Family, Inc., has 100% control of National Health Industries, Inc., and no other individuals or legal entities will have any authority or operating control to influence any of the health care operations included in the Almost Family, Inc., corporate structure. In addition, both FMR, LLC, and North Tide Capital, LLC, have submitted signed statements that despite owning 10% or more of the publically traded stock of Almost Family, Inc., neither has a representative on, nor controls any member of, the Board of Directors of Almost Family, Inc., and neither has or would have the ability to exercise any control over, or to direct, or cause the directions of, the actions, management, or policies of Almost Family, Inc., or of the individual health care operations and providers that fall under the corporate jurisdiction of Almost Family, Inc.

Almost Family, Inc., operates over 170 home health care providers in over 245 separate practice locations in 14 states. The complete list of the affiliated home health care providers and their practice locations, by state, has been included in the application and a copy is attached (see Attachment B – Almost Family Providers / Facilities). All providers listed are therefore affiliated with each board member, and each officer, named below. Other than FMR, LLC (Fidelity), and North Tide Capital, LLC, the two families of investment funds as noted above, there are no other stockholders owning 10% or more of the publicly traded stock of Almost Family, Inc.

The governing body of Almost Family, Inc., consists of the following members of the Board of Directors:

<p>William B. Yarmuth, Chairman Chairman &amp; CEO, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Henry M. Altman, Jr., CPA (KY), Director Owner/Financial Consultant, Altman Consulting, LLC (Financial Consulting)</p> <p><u>Affiliations:</u> Jewish Hospital and Healthcare Services (1983 – 2013)</p>
<p>Steven B. Bing, Director Executive Director, Kentucky Public Health Association and Kentucky Local Health Department Association (Health Care Provider Advocacy Associations)</p>	<p>Donald G. McClinton, Director Retired</p> <p><u>Affiliations:</u> Jewish Hospital and Healthcare Services, Louisville, KY (Hospitals System, 1994 – 2013)</p>

<p>Tyree G. Wilburn, MBA, Director Co-founder/Managing Partner, The Yearling Funds (Early Stage Venture Capital Funds)</p> <p><u>Affiliations:</u> Merit Health Systems, Louisville, KY (Owner/Operator of Hospitals System, 2003 – 2012)</p>	<p>Jonathan D. Goldberg, Esq. (KY) Managing Partner, Goldberg and Simpson, PLLC (Law Firm)</p>
<p>Walter Earl Reed, III, CPA (KY) President / Chief Executive Officer – Springstone, LLC (Psychiatric Hospitals)</p> <p><u>Affiliations:</u> Springstone, LLC, Louisville, KY (Owner/Operator of Psychiatric Hospitals, 2010 – Present), LifeCare Management Services, Plano, TX (Long Term Care Hospitals, 1998 – 2005)</p>	

Additional officers of Almost Family, Inc. are as follows:

<p>William B. Yarmuth, CEO (Disclosed Above)</p>	<p>Cletus Steven Guenther, President &amp; Principle Financial Officer, Almost Family, Inc. President and Principal Financial Officer – Almost Family, Inc., and National Health Industries, Inc.</p>
<p>Patrick Todd Lyles, MBA, Senior Vice President Senior VP for Administration, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Daniel Schwartz, Senior Vice President Senior VP and Chief Operating Officer, Almost Family, Inc. and National Health Industries, Inc.</p>
<p>Rajneesh Kaushal, Senior Vice President Senior VP and Chief Clinical Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Dana Case, CPA (KY, AL), Vice President VP for Internal Audit, Almost Family, Inc.</p>
<p>Denis B. Fleming, Jr., Esq. (KY), Vice President VP for Government Relations, Almost Family, Inc.</p>	<p>Catherine Pedigo, Vice President VP for Reimbursement, Almost Family, Inc. and National Health Industries, Inc.</p>
<p>Jeff Reibel, CPA (KY), Vice President VP for Finance and Chief Accounting Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Mark F. Sutton, MBA, Vice President VP for Human Resources, Almost Family, Inc.</p>

The governing bodies of both National Health Industries, Inc., and of Bracor, Inc. following the proposed transaction, will be identical, and consist of the following members of the Board of Directors:

<p>William B. Yarmuth, Chairperson (Disclosed Above)</p>	<p>Cletus Steven Guenther (Disclosed above)</p>
<p>Patrick Todd Lyles (Disclosed Above)</p>	

Additional officers of both National Health Industries, Inc., and of Bracor, Inc. following the proposed transaction, will also be identical as follows:



William B. Yarmuth, Chief Executive Officer (Disclosed above)	Cletus Steven Guenthner, President and Principal Financial Officer (Disclosed above)
Patrick Todd Lyles, Senior Vice President (Disclosed above)	Daniel J. Schwartz, Senior Vice President (Disclosed above)
Rajneesh Kaushal, Senior Vice President (Disclosed above)	Catherine Pedigo, Vice President (Disclosed above)
Jeffrey T. Reibel, Vice President (Disclosed above)	

The applicant proposes to serve the residents of the following counties from offices located at:

346 Delaware Avenue, Buffalo, New York 14202

Erie Genesee	Allegany Niagara	Cattaraugus Orleans	Chautauqua Wyoming
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220 Fluvanna Avenue, Jamestown, New York 14701

Chautauqua Genesee	Allegany Niagara	Cattaraugus Orleans	Erie Wyoming
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2211 West State Street, Suite 123, Olean, New York 14760

Cattaraugus Genesee	Allegany Niagara	Chautauqua Orleans	Erie Wyoming
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9701 Niagara Falls Boulevard, Suite 2C, Niagara Falls, New York 14304

Niagara Erie	Allegany Genesee	Cattaraugus Orleans	Chautauqua Wyoming
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bar Association of the State of Kentucky reports that the attorneys listed above are licensed in good standing with no disciplinary actions taken. In addition, the Kentucky Board of Accountancy, and the Alabama State Board of Public Accountancy, indicate there are no current issues with the licensure of the Certified Public Accountants listed above. The Kentucky Board of Accountancy does report that upon renewing his CPA license in 2014, Jeffrey T. Reibel had failed to complete the required hours of continuing education credits. He was allowed to renew his license, but was required to complete the required continuing education credit hours within 90 days, required to pay a civil penalty in the amount of \$500 within 30 days, and required to be subject to a continuing education audit review upon his next licensure renewal in 2016.

The applicant has provided the attached list of legal actions taken against Almost Family, Inc. (see Attachment C – Almost Family Legal Actions). The applicant has also provided the attached list of enforcement actions taken, and monetary penalties imposed, against the home health care

providers included in the Almost Family, Inc., corporate structure. (Attachment D – Almost Family Home Health Care Providers Enforcement Actions).

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated Willcare certified home health agencies (CHHAs), long term home health care programs (LTHHCPs), and licensed home care services agencies (LHCSAs) located in New York State, for the time period 2008 to 2015.

An enforcement action was taken in 2013 against Western Region Health Corporation, d/b/a Willcare, a CHHA located in Buffalo, based on a November 2012 survey, citing violations in Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; Policies and Procedures of Service Delivery; and Personnel. This action was resolved with a \$5,500 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

To date, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers included in the Almost Family, Inc. corporate structure, as listed on Attachment B: Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, and Tennessee. In addition, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers listed as affiliations of individual board members and/or officers of Almost Family, Inc.: Arizona, Colorado, Florida, Illinois, Indiana, Louisiana, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. Out-of state enforcement actions that were reported by the states are as follows:

Florida reported that Caretenders Visiting Services of Gainesville, LLC, d/b/a Mederi Caretenders in Gainesville, had an administrative fine imposed in October 2014 due to an initial application deficiency, with no further information provided by the state. However, the applicant has provided an extensive list of Florida enforcement actions in Attachment D that provides further details regarding each of the citations and dollar fines imposed.

Georgia reported that SunCrest Home Health of Georgia, Inc., d/b/a SunCrest Home Health, a home health agency in Riverdale, was fine \$450 in January 2015 for violations of state home health agency regulations that were cited in September, 2014. This action was also included in Attachment D by the applicant.

Texas reported that Springstone, LLC's Mesa Springs, a psychiatric hospital in Fort Worth (individual board member affiliation) was assessed an administrative penalty of \$5000 in December, 2014, with no further information provided by the state.

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Almost Family, Inc., and National Health Industries, Inc., to adversely affect their positions on the boards or as officers. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

## ATTACHMENTS

Programmatic Attachment A Willcare Before and After Organizational Charts

Programmatic Attachment B Almost Family Providers / Facilities  
Programmatic Attachment C Almost Family Legal Matters  
Programmatic Attachment D Almost Family Home Health Care Providers Enforcement Actions

Contingency

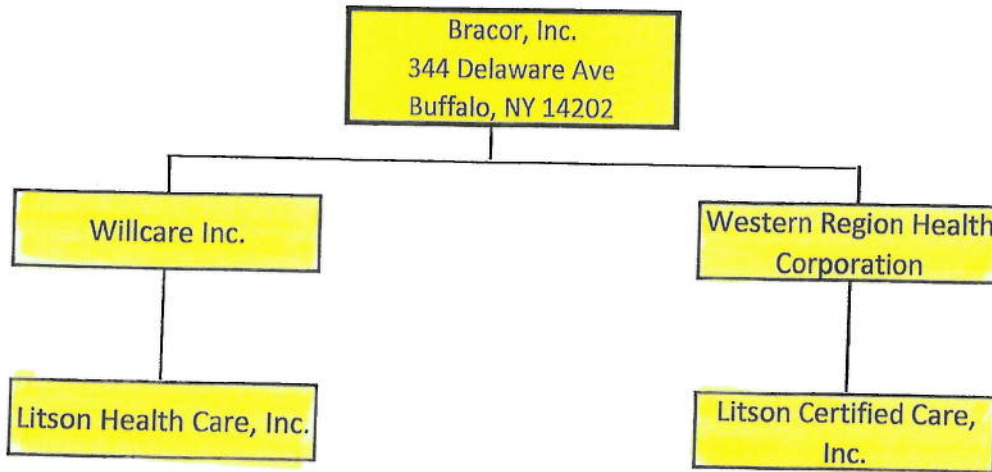
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: May 22, 2015

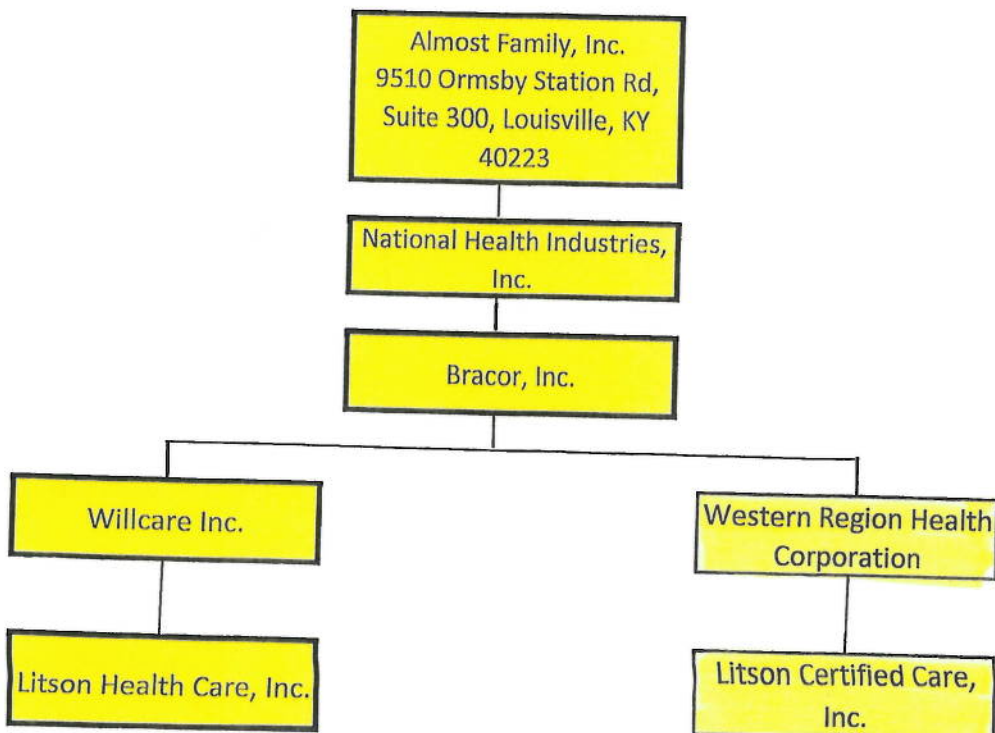
## Transaction Structure

### Current



Shareholders of Bracor, Inc. will sell their stock to National Health Industries. National Health Industries will then own Bracor, Inc. and its interest in Willcare, Inc., and Western Region Health Corporation. Willcare Inc. will continue to own its interest in Litson Health Care and Western Region Health Corporation will continue to own its interest in Litson Certified Care. Almost Family, Inc. is the Parent Public Company of National Health Industries, Inc.

### Proposed



CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 1 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
SunCrest Home Health of AL, Inc.	SunCrest Home Health	222-224 7th Street South	Clanton	AL	35045-3704	USA
Priority Care, Inc.	Patient Care	1344 Sias Deane Hwy	Rocky Hill	CT	06067-1342	USA
Priority Care, Inc.	Patient Care	185 Sias Deane Highway, 3rd Floor	Wethersfield	CT	06109	USA
Priority Care, Inc.	Patient Care	11 Lake Ays Excl, Suite 2W	Danbury	CT	06811-5258	USA
Priority Care, Inc.	Patient Care	3074 Whitnay Ave	Hamden	CT	06518-2391	USA
Priority Care, Inc.	Patient Care	1 Long Wharf Drive, Suite 102	New Haven	CT	06511-5991	USA
Priority Care, Inc.	Patient Care	120 East Ave, Ste 2E	Norwalk	CT	06851-5703	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	165 Standing Blvd., Suite 1	Orange Park	FL	32073-2624	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	6789 Southpoint Pkwy, Suite 200	Jacksonville	FL	32216-8206	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	2237 Riverside Avenue	Jacksonville	FL	32204-4619	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	1425 Hand Ave, Suite 1	Ormond Beach	FL	32174-1126	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	1775 Harkley Strickland Blvd, Suite 108	Orange City	FL	32763-7963	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	3550 Dunn Avenue, Suite 103	Jacksonville	FL	32216-8428	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	6789 Southpoint Pkwy, Suite 200	Jacksonville	FL	32216-8206	USA
Carelanders Visiting Services of District 5, LLC	Mederi Caretenders	18591 Murreck Cir Ste 30A	Port Charlotte	FL	33948-1039	USA
Carelanders Visiting Services of District 6, LLC	Florida Home Health	201 2nd St East	Bradenton	FL	34209-1030	USA
Carelanders Visiting Services of District 6, LLC	Florida Home Health	2155 US 27	Selbring	FL	33870-4933	USA
Carelanders Visiting Services of District 6, LLC	Mederi Caretenders	8206 Manatee Ave W, Ste 100	Bradenton	FL	34205-7174	USA
Carelanders Visiting Services of District 6, LLC	Mederi Caretenders	308 S. 10th Street, Ste 340	Haines City	FL	33844-8602	USA
Carelanders Visiting Services of District 7, LLC	Mederi Caretenders	3205 West Eau Claire Blvd, Ste 103	Marlbourn	FL	32834-2235	USA
Carelanders Visiting Services of Gainesville, LLC	Mederi Caretenders	4823 NW 43rd Street, Suite A	Gainesville	FL	32608-4490	USA
Carelanders Visiting Services of Gainesville, LLC	Mederi Caretenders	3893 NW Dwyane St	Lake City	FL	32055-4841	USA
Carelanders Visiting Services of Gainesville, LLC	Mederi Caretenders	95 NW 253rd St	Newberry	FL	32669	USA
Carelanders Visiting Services of Gainesville, LLC	Better @ Home	210 South Lake Street, Suite 10	Leesburg	FL	34748-7370	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Caretenders	12108 Cortez Blvd	Brooksville	FL	34613-6514	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Caretenders	3900 Crill Avenue	Palatka	FL	32177-9171	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Caretenders	1980 Prevatt Street	Eustis	FL	32726	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Caretenders	2212 Highway 44 West	Inverness	FL	34453-3860	USA
Carelanders Visiting Services of Hernando County, LLC	Better @ Home	1554 Bella Cruz Dr	Ledy Lake	FL	32759-9969	USA
Carelanders Visiting Services of Ocala, LLC	Better @ Home	8590 SW Highway 200, Unit 5	Ocala	FL	34491-7703	USA
Carelanders Visiting Services of Ocala, LLC	Better @ Home	1333 SE 25th Loop, Suite 102	Ocala	FL	34471-1072	USA
Carelanders Visiting Services of Orlando, LLC	Mederi Caretenders	474 S. Northlake Blvd	Aitahome Springs	FL	32701-6245	USA
Carelanders Visiting Services of Orlando, LLC	Mederi Caretenders	1187 Miranda Lane	Kissimmee	FL	34714-0763	USA
Carelanders Visiting Services of Pinellas County, LLC	Mederi Caretenders	6445 162nd Avenue North	Pinellas Park	FL	33782-3027	USA
Carelanders Visiting Services of Pinellas County, LLC	Mederi Caretenders	2430 Estancia Blvd, Suite 201	Clearwater	FL	33761-2044	USA
Carelanders Visiting Services of St. Augustine, LLC	Community Home Health	301 Health Park Blvd., Suite 110	St. Augustine	FL	32086-5784	USA
Mederi Caretenders VS of Broward, LLC	Mederi Caretenders	4801 NW 17th Way, Suite 104	FL Lauderdale	FL	33309-3770	USA
Mederi Caretenders VS of Broward, LLC	Mederi Caretenders	4 Harvard Circle, Ste 650	West Palm Beach	FL	33409-1990	USA
Mederi Caretenders VS of SE FL, LLC	Mederi Caretenders	1285 36th Street, Suite 201	Yero Beach	FL	32960-6568	USA
Mederi Caretenders VS of SE FL, LLC	Mederi Caretenders	1800 SE Port St. Lucie Blvd Morningdale Professional Plaza	Port St. Lucie	FL	34952-7576	USA
Mederi Caretenders VS of SW FL, LLC	Mederi Caretenders	6160 Diamond Center Court, Suite A	St. Myer	FL	33912-7147	USA
Mederi Caretenders VS of SW FL, LLC	Mederi Caretenders	3459 Pine Ridge Rd. #801	Naples	FL	34106-3838	USA
Mederi Caretenders VS of Tampa, LLC	Quality of Life Home Care Services	3500 E. Fletcher Ave Suite 100	Tampa	FL	33613-4701	USA
Mederi Caretenders VS of Tampa, LLC	Quality of Life Home Care Services	1476 Town Center Dr Suite 211	Lakeland	FL	33802-7374	USA
OMNI Home Health- District 1, LLC	SunCrest OMNI	8800 University Parkway, Ste G-3	Pensacola	FL	32514-4928	USA
OMNI Home Health- District 2, LLC	SunCrest OMNI	1617 Tennessee Ave	Lynn Haven	FL	32244-3652	USA
OMNI Home Health- District 2, LLC	SunCrest OMNI	2343 Hansen Ln	Tallahassee	FL	32301-4898	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	4359 South Suncoast Boulevard	Honnasassa	FL	34446-1181	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	1037 US Hwy 90 W, Suite 140	Lake City	FL	32055-3740	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	4045 NW 43rd Street, Suite B	Gainesville	FL	32606-6098	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	3200 SW 34th Avenue, Suite 301	Ocala	FL	34474-7463	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	700 Zealor Dr, Suite 6	Palatka	FL	32177-3826	USA
OMNI Home Health- Jacksonville, LLC	SunCrest OMNI	8143 Phillips Highway, Suite 170	Jacksonville	FL	32256-1361	USA
OMNI Home Health- District 4, LLC	St. Vincent's Home Health	2651 Park Street	Jacksonville	FL	32204-4319	USA
Home Health Agency- Pinellas, LLC	Mederi Caretenders	7615 Little Road	New Port Richey	FL	34654-6525	USA
Home Health Agency- Hillsborough, LLC	Florida Home Health	139 South Pebble Beach Blvd, Suite 201	Sun City Center	FL	33573-4712	USA
Home Health Agency- Hillsborough, LLC	Florida Home Health	1802 55th Street West	Bradenton	FL	34209-4630	USA
Home Health Agency- Collier, LLC	Mederi Caretenders	5260 Station Way, Bld B	Sarasota	FL	34233-3232	USA

CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 2 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
BGR Acquisition, LLC	Community Home Health	475 West Town Place, Suite 100	St. Augustine	FL	32092-3649	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	2440 Lake Park Dr., Ste 119	Smryna	GA	30060-8993	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	905A Interstate Ridge Drive	Gainesville	GA	30601-7074	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	6109 Highway 276 NE, Suite C	Covington	GA	30014-2608	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	23 Upper Riverdale Road Southwest, Suite 130	Riverdale	GA	30274-2818	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	1916 South 9th Street	Griffin	GA	30224-4111	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	245 Bullock Drive, Suite D & E	Newnan	GA	30263-3168	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	17370 Hodgson Memorial Drive, Suite A7	Savannah	GA	31406-2536	USA
SunCrest Home Health of South GA, Inc.	SunCrest Home Health	110 E. 4th Street	Adel	GA	31620-2730	USA
SunCrest Home Health-Boothucke, LLC	SunCrest Home Health	7840 Roswell Rd., Ste 215	Atlanta	GA	30380-8877	USA
Caretenders Visiting Services of Southern Illinois, LLC	Mederi Caretenders	141 Market Place Dr Suite 110	Fairview Heights	IL	62726-2034	USA
Caretenders Visiting Services of Southern Illinois, LLC	Mederi Caretenders	438 Memorial Drive	Breese	IL	62230-1096	USA
Caretenders Visiting Services of Southern Illinois, LLC	Mederi Caretenders	4202 Williamson Place, Suite 1	MT Vernon	IL	62464-6760	USA
Hema Health Agency- Illinois, LLC	OMNI Home Care	1724 State Street	Mokena	IL	60448-8135	USA
Caretenders Visiting Services of Kentuckiana, LLC	Caretenders	63 Quartermaster Court	New Albany	IN	47160-4604	USA
Caretenders Visiting Services of Kentuckiana, LLC	Caretenders	522 Franklin Street	Jeffersonville	IN	47130-3623	USA
IN Homecare Network North, LLC	Angels of Mercy Homecare	1400 N. Webster St, Suite 100	Columbus	IN	47201-6214	USA
IN Homecare Network North, LLC	Angels of Mercy Homecare	444 Mall Rd, Suite 1	Marion	IN	46952-1300	USA
IN Homecare Network North, LLC	Angels of Mercy Homecare	2280 Providence Ct, Suite D	Logansport	IN	46947-2242	USA
IN Homecare Network North, LLC	Indiana Homecare Network	3705 N. Briarwood Ln	Warsaw	IN	46850-3284	USA
IN Homecare Network Central, LLC	Angels of Mercy Homecare	5128 E. Stop 11 Rd Suite 37	Muncie	IN	47304-6361	USA
Caretenders Visiting Services of Kentuckiana, LLC	Angels of Mercy Homecare	611 E. 4th St, Suite 111	Indianapolis	IN	46237-6336	USA
Hema Health Agency- Indiana, LLC	OMNI Home Care	111 Sawwood Road	Huntingburg	IN	47542-1360	USA
Hema Health Agency- Indiana, LLC	OMNI Home Care	800 N. Weinbach Ave, Suite 610	Richmond	IN	47374-6091	USA
Caretenders VS of Central KY, LLC	Caretenders	2432 Regency Road, Suite 180	Evansville	IN	47711-6976	USA
Caretenders VS of Central KY, LLC	Caretenders	101 Medical Heights Drive Suite 0	Lexington	KY	40503-2889	USA
Caretenders VS of Central KY, LLC	Caretenders	101 Ponder Ct, Suite A	Frankfort	KY	40601-4137	USA
Caretenders VS of Central KY, LLC	Caretenders	5008 Abundant Drive, Ste. 1	Danville	KY	40422-9007	USA
Caretenders VS of Central KY, LLC	Caretenders	1571 Park Rd Ste F	Richmond	KY	40475-8184	USA
Caretenders VS of Western KY, LLC	Caretenders	2200 East Parish Ave, Bldg. E, Suite 203	Georgetown	KY	40324-8804	USA
Caretenders VS of Western KY, LLC	Caretenders	1630 Sycamore St.	Owensboro	KY	42303-1448	USA
Caretenders VS of Western KY, LLC	Caretenders	352 East Center Street	Henderson	KY	42420-3384	USA
Caretenders VS of Western KY, LLC	Caretenders	112 McMurry Street, Suite 2	Madisonville	KY	42431-2136	USA
Caretenders VS of Western KY, LLC	Coldwell Comply Hospital Home Health Agency	1310 US Highway 62 West	Hartford	KY	42347	USA
Caretenders VS of Louisville, LLC	Caretenders	4545 Bishop Lane, Suite 200	Pineville	KY	42445-6106	USA
Caretenders VS of Louisville, LLC	Caretenders	1653 Hwy 44 East, Ste. 1	Louisville	KY	40218-4574	USA
Caretenders VS of Louisville, LLC	Caretenders	2206 Commerce Pkwy, Suite A	Shepardsville	KY	40365-7483	USA
Caretenders VS of Louisville, LLC	Caretenders	1169 Eastern Parkway, Suite 3323	LaGrange	KY	40331-6781	USA
Caretenders VS of Louisville, LLC	Caretenders	197 Alpine Drive	Louisville	KY	40217-1415	USA
Caretenders VS of Louisville, LLC	Caretenders	9702 Stonestree Road, Medical Office Bldg. 1, Suite 330	Shelbyville	KY	40365-6876	USA
Caretenders VS of Lincoln Trail, LLC	Caretenders	1105 Juliana Court, Ste. 3	Louisville	KY	40272-6820	USA
Caretenders VS of Lincoln Trail, LLC	Caretenders	835A Chambers Blvd	Elizabethtown	KY	42701-7037	USA
Caretenders VS of Lincoln Trail, LLC	Caretenders	1270 Old Elkon Road, Suite C	Brandstrom	KY	40004-2575	USA
Caretenders VS of Central KY, LLC	Caretenders of Northern KY	169 Barrow Drive, Suite A	Brandenburg	KY	40168-3345	USA
Trigg County Home Health, Inc.	SunCrest Home Health	72 Lone Oak Drive	Edgewood	KY	41017-2801	USA
Caretenders VS of Boston, LLC	Caretenders	29 Crafts Street, Suite 330	Cadiz	KY	40211-6520	USA
Caretenders VS of Boston, LLC	Caretenders	401 Andover Street, Suite 102	Newton	MA	02458-1271	USA
Caretenders VS of Boston, LLC	Caretenders	287 Temple Road, Suite 285	North Andover	MA	01845-5076	USA
Caretenders VS of Boston, LLC	Caretenders	222 Forbes Road, Suite 102	Westborough	MA	01581	USA
Caretenders VS of Boston, LLC	Caretenders	330 Whitney Ave, Ste 72b	Baldwin	MA	02184-2718	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	659 Craig Road, Suite 140	Holyoke	MA	01940-2859	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	83 North Craig, Ste. B	Creve Coeur	MO	63141-7168	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	1041 Pegasus Crossing Court, Suite B	Sullivan	MO	63030-1606	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	6410 Wise Ave	O'Fallon	MO	63366-2362	USA
Patient Care New Jersey, Inc.	Patient Care	6 Brighton Rd Ste 107	Saint Louis	MO	63139-3315	USA
Patient Care New Jersey, Inc.	Patient Care	400 Morris Ave, Ste. 218	Clifton	NJ	07012-1604	USA
Patient Care New Jersey, Inc.	Patient Care	366 West Passaic Street	Denville	NJ	07834-1362	USA
Patient Care New Jersey, Inc.	Patient Care	795 Franklin Ave., Ste C201	Rochelle Park	NJ	07662-3012	USA
			Franklin Lakes	NJ	07417-1368	USA

CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 3 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA/Name	Address	City	ST	Zip	Country
Patient Care Medical Services, Inc.	Patient Care	300 Executive Drive, Suite 175	West Orange	NJ	07052-0377	USA
Patient Care Medical Services, Inc.	Patient Care	495 N. 79th Street, Suite 24-2-1	Newark	NJ	07107-1317	USA
Caretenders VS of Ohio, LLC	Caretenders VNA	1221 East Main Street	Lancaster	OH	43139-4358	USA
Caretenders VS of Ohio, LLC	Caretenders VNA	1900 Crown Park Court, Suite C	Columbus	OH	43235-2407	USA
Caretenders of Cleveland, Inc.	Caretenders	23611 Chagrin Blvd, Suite 130	Beachwood	OH	44122-5540	USA
Caretenders of Cleveland, Inc.	Caretenders	1225 E. Waterloo Road	Akron	OH	44306-3805	USA
Caretenders of Cleveland, Inc.	Caretenders	18600 Jefferson Park Rd, Suite 103	Middleburg Heights	OH	44130-3488	USA
Caretenders of Cleveland, Inc.	Caretenders	130 Churchill-Hubbard Rd	Youngstown	OH	44505-1323	USA
Caretenders of Cleveland, Inc.	Caretenders	4565 Dressler Road N.W., Suite LL02	Carlton	OH	44718-2594	USA
Caretenders of Cleveland, Inc.	Caretenders	2502 Hubbard Road	Madison	OH	44057	USA
Caretenders of Cleveland, Inc.	Caretenders	20600 Chagrin Blvd, Suite 290	Shaker Heights	OH	44122-5344	USA
Caretenders Visiting Services of Columbus, LLC	Caretenders VNA	1515 Bethel Road	Columbus	OH	43226-1804	USA
Caretenders VNA of Ohio, LLC	Caretenders VNA	1450 Columbus Avenue, Suite 102	Washington Courthouse	OH	43160-1867	USA
Caretenders VS of SE Ohio, LLC	Caregivers Health Network	9812 Center Rd Ste 100	Blue Ash	OH	45242-6541	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	4840 Hebbes Ave NW	Canton	OH	44718-2528	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	523 West Main Ave	New Philadelphia	OH	44663	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	210 East Morrow, Suite C	Wooster	OH	44691	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	109B-B East State Street	Salon	OH	44480	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	2615 Sunset Boulevard	Steubenville	OH	43952-1115	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	700 Park Ave West	Mansfield	OH	44906-3009	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	314 South Main Street	Mount Vernon	OH	43050	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1630 East Way	Ashland	OH	44895	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	165 W. Center St, Ste 401	Marietta	OH	43902-3741	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1949 State Route 59, Suite 101	Kent	OH	44240-8113	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	2819 South Hayes Ave Suite 10	Sandusky	OH	44870-5391	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1204 E Broad St	Elviria	OH	44625-6308	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	7043 Peed Road, Suite 260	Middleburg Heights	OH	44126	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	1130 Vesnot Ave	Springfield	OH	45503-7302	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	7028 Old Troy Pike	Huber Heights	OH	45424-2750	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	1100 Brandwynn Blvd, Ste E, 1st Fl	Zanesville	OH	43701	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	103 Scammal Street	Marietta	OH	45750	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	1300 Clark St, Suite 7	Cambridge	OH	43725-8875	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	213 Columbus Road, Suite 103	Athens	OH	45701	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	1948 Tamarack Road	Newark	OH	43055-1300	USA
Patient Care Pennsylvania, Inc.	Patient Care	2201 Ridgecroft Road, Suite 210	Wyncanning	PA	19610-1496	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	3583 East State St	Hickamge	PA	16146-3450	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1140 N. Main Street Ext	Butler	PA	16001	USA
Home Health Agency- Pennsylvania, LLC	OMNI Home Care	806 North Bell Ave, Suite 130	Camasie	PA	16105-4324	USA
Home Health Agency- Central Pennsylvania, LLC	OMNI Home Care	221 Hospital Drive, Suite 2	Tyone	PA	16866-1808	USA
Home Health Agency- Central Pennsylvania, LLC	OMNI Home Care	6310 Allentown Blvd, Ste 100	Harrisburg	PA	17112-2735	USA
Home Health Agency- Central Pennsylvania, LLC	OMNI Home Care	673 Clara Lane	York	PA	17402-4317	USA
Home Health Agency- Philadelphia, LLC	OMNI Home Care	872 Jenkintown Road, Suite 2	Elkins Park	PA	19027-1649	USA
Home Health Agency- Philadelphia, LLC	OMNI Home Care	5000 Timpani St Suite 110	Allentown	PA	18106-6167	USA
Home Health Agency- Philadelphia, LLC	OMNI Home Care	Belway Commons, 426 Alport Road, Suite 136	Hazel Township	PA	18202-3361	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	2606 Corporate Avenue, Suite 201	Memphis	TN	38132-1768	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	608-C Tennessee Street	Bolivar	TN	38606-2443	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	1310 East College Street	Brownsville	TN	38012-1657	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	442 Highway 51 North, Suite G	Covington	TN	38019-2374	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	2007 Oak Tree Cove	Hernando	MS	38632-1183	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	491 B Craft Street	Holly Springs	MS	38635-3251	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	2603 Corporate Ave., Suite 250	Memphis	TN	38132-1716	USA
SunCrest Home Health of Nashville, Inc.	SunCrest Home Health	2292 Dalton Dr., Suite A	Clarksville	TN	37043-8960	USA
SunCrest Home Health of Nashville, Inc.	SunCrest Home Health	899 Highway 70 E	Dickson	TN	37055-2158	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	1210 Briarville Road, Building D	Madison	TN	37145-5141	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	1886 General George Patton Drive, Suite 500	Franklin	TN	37067-4608	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	12124 Highway 52W Suite 2	Westmoreland	TN	37186-3245	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	168 Cude Lane	Madison	TN	37145-2202	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	600 West Nashville Pike, Suite 200	Gallatin	TN	37066-7140	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	471 West Broad Street	Smithville	TN	37166-1116	USA

CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 4 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	451 Vada Dr, Sparta Medical Office Complex	Sparta	TN	38583-1299	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	345 S. Jefferson Street, Suite 201	Cookeville	TN	38501-3492	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	828 McMinnville Highway	Woodbury	TN	37180-1241	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	417 North Chancery Street	McMinnville	TN	37110-2048	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	1312 W. Main Street, Suite A	Lebanon	TN	37087-3284	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	499 Caywood Road	Tazewell	TN	37789-3026	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	105 W. Stone Dr.	Kingsport	TN	37660-3385	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	857 Broadway Ste B	Jefferson City	TN	37760-4949	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Hospice	499 Caywood Road	Tazewell	TN	37789-3026	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	1914 McArthur Street	Manchester	TN	37355-2624	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	1313 Colquhoun Boulevard, Suites 4 & 5	Shebville	TN	37160-2789	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	155 Hospital Rd., Suite B	Winchester	TN	37398-2485	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	215 Castlewood Drive, Suite C	Murfreesboro	TN	37129-5164	USA
Adult Day Care of America, Inc.	ADC of America	211 State Street, 3rd Floor	Bridgeport	CT	06604	USA
Adult Day Care of America, Inc.	ADC of America	11 Lake Ave Ext., Suite 2W	Danbury	CT	06811-5258	USA
Adult Day Care of America, Inc.	ADC of America	17R Boston Post Rd Unit 2	Waterford	CT	06385-2431	USA
Adult Day Care of America, Inc.	ADC of America	76 Center Street, 2nd Floor East	Waterbury	CT	06897-4429	USA
Adult Day Care of America, Inc.	ADC of America	1 Long Wharf Drive, Suite 102	New Haven	CT	06511-5991	USA
Adult Day Care of America, Inc.	ADC of America	1150 Summer Street	Stamford	CT	06906-5330	USA
Almost Family PC of FL Lauderdale, LLC	Almost Family	1344 Silas Oestre Highway	Rocky Hill	CT	06067-1342	USA
Almost Family PC of SW Florida, LLC	Almost Family	5440 NW 24th Ave, Suite 111	FL Lauderdale	FL	33309-8941	USA
Almost Family PC of SW Florida, LLC	Almost Family	5280 Station Way, Bldg 6	Sarasota	FL	34233-3332	USA
Almost Family PC of West Palm, LLC	Almost Family	851 5th Ave North, Suite 101	Naples	FL	34102-5582	USA
Almost Family PC of West Palm, LLC	Almost Family	4 Harvard Circle, Ste 500	West Palm Beach	FL	33408	USA
Caretenders Visiting Services of St. Augustine, LLC	Apex Companion Care	6780 Southgolf Pkwy, Suite 200B	Jacksonville	FL	32216-8208	USA
Caretenders Visiting Services of St. Augustine, LLC	Apex Companion Care	313 Wilmetta Ave, Suite 4	Ormond Beach	FL	32174-8105	USA
SunCrest Home Health of Tampa, LLC	SunCrest OMAN	306 S. Hoover Blvd, Suite 160	Tampa	FL	33609-3597	USA
Almost Family PC of Kentucky, LLC	Almost Family	2432 Reschey Road, Suite 180	Lexington	KY	40505-2989	USA
Almost Family PC of Kentucky, LLC	Almost Family	4545 Bishop Lane, Suite 200	Louisville	KY	40216-4574	USA
Almost Family PC of Kentucky, LLC	Almost Family	168 Barnwood Drive, Suite A	Edgewood	KY	41017-2597	USA
Almost Family PC of Kentucky, LLC	Almost Family	2290 E. Parish Ave., Bldg E, Suite 202	Owensboro	KY	42303-1449	USA
Caretenders VS of SE Ohio, LLC	Caretenders Health Network	5912 Carver Rd Ste 100	Blue Ash	OH	45242-5541	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	20800 Chagrin Blvd, Suite 250	Shaker Heights	OH	44122-5245	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	1225 E. Waterloo Road	Akron	OH	44308-3805	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	18000 Jefferson Park Rd, Suite 102	Hillsburg Heights	OH	44130-3440	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	4565 Dressler Road N.W., Suite LL02	Canton	OH	44718-2584	USA
Caretenders of Columbus, Inc.	Almost Family	1900 Crown Park Court, Suite C	Columbus	OH	43235-2407	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	213 Columbus Road, Suite 103	Albans	OH	45701	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	4840 Hebe Ave NW	Canton	OH	44718-2528	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	74 North Troy Pike	Chillicothe	OH	45601	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	7025 Old Troy Pike	Huber Heights	OH	45424-2760	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	1204 East Broad Street	Elyria	OH	44035-6302	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	118 South Main Street	Findlay	OH	45540	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	780 Park Ave West	Mansfield	OH	44806-3009	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	165 W. Center St, Ste 401	Marion	OH	43302-3741	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	520 East Smith Rd	Medina	OH	44256-2638	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	7043 Pearl Road, Suite 260	Middleburg Heights	OH	44130	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	1949 Tamarsck Road	Newark	OH	43055-1300	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1948 State Route 59, Suite 101	Ken	OH	44240-8113	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1130 Vester Ave	Springfield	OH	45503-7302	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	2615 Sunset Blvd	Steubenville	OH	43982	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	1574 Henthorn Dr, Suite B	Maumee	OH	43537-3821	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	8536 Crow Dr, Suite 230	Macedonia	OH	44026-1900	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	5423 Mahoning Avenue, Suite C	Austintown	OH	44515	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	2819 South Hayes Avenue, Suite 10	Pelee	OH	44870-5391	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	1100 E-A Brandywine Blvd	Zanesville	OH	43701-7933	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	3553 East State St	Hermitage	PA	16148-3450	USA
Cambridge Home Health Care, Inc./Private	Cambridge Home Health Care	1140 N. Main Street Ext.	Butler	PA	15001	USA



CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 5 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
SunCrest Companion Services, LLC		168 Cude Lane	Madison	TN	37116-2202	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	117 C East Bryant Street	Smithville	TN	37166-1339	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	1914 McArthur Street	Manchester	TN	37355-2624	USA
SunCrest Home Health of Nashville, Inc.	SunCrest Home Health	2282 Dalton Dr Suite A	Clarksville	TN	37043-8950	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	857 Broadway Ste B	Jefferson City	TN	37760	USA
Mederi Caretenders VS of Broward, LLC	Mederi Caretenders	4901 NW 17th Way Suite 104	Pt. Lauderdale	FL	33309-3770	USA
Mederi Caretenders VS of SE FL, LLC	Mederi Caretenders	1906 SE Peft St. Lucie Blvd Morningside Professional Plaza	Port St. Lucie	FL	34952-7575	USA
Mederi Caretenders VS of SE FL, LLC	Mederi Caretenders	4 Harvard Cr, Ste 950	West Palm Beach	FL	33409-1890	USA
Caretenders Visiting Services of Orlando, LLC	Mederi Caretenders	3600 West Eau Gallie Blvd, Suite 103	Melbourne	FL	32934-3285	USA
Caretenders Visiting Services of District 6, LLC	Mederi Caretenders	18501 Munlock Cr, Suite 308	Port Charlotte	FL	33848-1038	USA
Caretenders of Jacksonville, LLC	Apex Health and Rehab Center	6789 Southpoint Pkwy, Suite 200	Jacksonville	FL	32216-8205	USA
Caretenders Visiting Services of Gainesville, LLC	Mederi Caretenders Health & Rehab	8109 NW 27th Blvd	Gainesville	FL	32606-8836	USA
SunCrest Outpatient Rehab Services, LLC	SunCrest Rehab Services	9143 Phillips Highway, Suite 170	Jacksonville	FL	32258-1381	USA

The individuals affiliated with Almost Family, Inc. making this Change of Ownership application have not personally had any convictions, administrative actions or allegations related to malpractice, fraud, breach of fiduciary responsibility, Medicare or Medicaid actions or penalties, civil or criminal actions, convictions as defined in this application. The Directors and Officers of Almost Family are reporting the following legal actions that they were involved with as a result of their position with Almost Family, Inc. over the last 10 years.

**I) Senate Finance Committee Investigation**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenther, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

An article about home health care reimbursement was published in the Wall Street Journal on April 27, 2010. This article made some general allegations about the home health industry, and eventually led to Almost Family, Inc. and three other public home health companies to receiving notification from the U.S. Senate, Committee on Finance that it had opened an investigation into the home health reimbursement policies, and was requested that Almost Family provide documents in response to the investigation. The company fully complied with the request from the Senate Finance Committee, and ultimately provided over 1.1 million documents to the committee for review over a several month period of time.

The Senate Finance Committee issued a Staff Report Home Health and Medicare Therapy Threshold on October 3, 2011. While generally unfavorable to the industry, the Committee did note that “none of the documents provided to the Committee by Almost Family show that executives ever pushed therapist to target thresholds or pursue more profitable clinical regimens.” The company has completed its work in response to this investigation, and no action was taken against the company.

**II) U. S. Securities and Exchange Commission Investigation**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenther, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

On June 30, 2010, Almost Family received notice from the U.S. Securities and Exchange Commission that it was conducting an investigation (HO-11425) of Almost Family, Inc. and a Subpoena was issued requesting documents submitted to the Senate Finance Committee, along with additional documents. We believe the theory of the investigation was the company’s financial statements would have been misstated if the allegations being investigated by the Senate Finance Committee were true.

On November 2, 2012, Almost Family received letters from the U.S. Securities and Exchange Commission notifying the company that “we do not intend to recommend any enforcement action by the Commission. We are providing this information under guidelines in the final paragraph of Securities Act Release No. 5310.”

**III) U. S. Securities and Exchange Commission Investigation**

Applies to Directors Yarmuth, McClinton, Reed, Wilburn,  
Applies to Officers Guenther,

On June 30, 2010, Almost Family received notice from the U.S. Securities and Exchange Commission that it was conducting an investigation (HO-11425) of Almost Family, Inc. In addition on October 20, 2011 Directors McClinton, Reed and Wilburn, and on December 15, 2011 Director Yarmuth, and Office Guenther received subpoena seeking information about their sales of Almost Family, Inc. stock.

On November 2, 2012, the above named Directors and Officers received letters from the U.S. Securities and Exchange Commission notifying them that “we do not intend to recommend any enforcement action by the Commission. We are providing this information under guidelines in the final paragraph of Securities Act Release No. 5310.”

**IV) Derivative Lawsuit**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

On July 14, 2010, a derivative lawsuit was filed against Almost Family, Inc. and the Directors and Officers of Almost Family, Inc. by Daniel Himmel in Jefferson Circuit Court Division, Louisville, Kentucky Case Number 10CI004892. This lawsuit was then followed by additional shareholder lawsuits that simply reiterated that there was an article in the Wall Street Journal alleging inappropriate billing and reimbursement practices, and that the company was under investigation by the both Senate Finance Committee and the S.E.C.

The lawsuits in general lacked specific allegations of wrong doing by the company, and the company undertook appropriate actions to defend the each of the above. All of these matters were disclosed in the public filing of Almost Family, Inc. to the United States Securities and Exchange Commission on forms 10Q and 10K as the matters were in process.

On December 15, 2012 the Derivative lawsuit of Daniel Himmel was consolidated with the other lawsuits filed by Jared White, Norman Cohen and Richard Margolis on behalf of Almost Family v. the Board of Directors of Almost Family, with Civil Action 10-CI-004892 being the sole surviving case.

Almost Family, Inc. filed a Motion to Dismiss based on Demand Futility on February 13, 2012. The Court Granted the Company’s Motion to Dismiss on October 2, 2012.

On October 30, 2012, the plaintiffs appealed the decision to the Kentucky Court of Appeals, (Case No. 2012-CA-001926-MR) and on March 1, 2013 submitted their brief to the Court. The Company filed its response brief on April 20, 2013.

On July 17, 2013 while the decision was pending with the Kentucky Court of Appeals, shareholder Cohen served a demand letter on the Board. The demand letter alleged the same arguments of the shareholder derivative suits, and requested the Board take action against certain individuals for violating the fiduciary duties. In response to the demand letter, the Board appointed a Special Committee to investigate the allegations, and filed a Motion to Dismiss with the Kentucky Court of Appeals based on the appeal being moot. The Special Committee hired outside legal counsel, and completed an investigation and filed its report on June 3, 2014. After review of the Special Committee report, the parties made a joint Motion to Dismiss the case, and the Kentucky Court of Appeals granted the Motion on September 9, 2014. The case is final and no action was taken against the company or the Directors.

**V) Shareholder Derivative Lawsuits**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

United States District Court, Western District of Kentucky,  
Richard W. Carey vs. Almost Family, Inc. and the Board of Directors, Case No. 3:11-cv00163. While the other shareholder derivative lawsuits were filed in Kentucky State Court, this shareholder elected to file his case in Federal Court. In the lawsuit Almost Family Inc. filed a Motion to Stay the case while other derivative state court lawsuits proceeded in the Kentucky court system. An Order was entered by Judge John Heyburn August 15, 2011 to Stay to case. The lawsuit was Dismissed with Prejudice on November 5, 2014. The case is final and no action was taken against the company or the Directors

**VI) Qui Tam Case - Birmingham**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenther, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

United States District Court, Northern District of Alabama,  
Janice Jordan Broussard and Venice Pruitt Cannon ex. rel. United States of America vs. Almost Family, Inc. Civil Action Number 2:09-cv-01274-AKK  
A Qui Tam lawsuit was filed under seal on behalf of the United States by two former employees of Almost Family alleging violations of Medicare billing procedures. The matter was investigated by the FBI, and Almost Family provided documents in response to a subpoena. The government after review of documents decided not to pursue the case, and plaintiffs Broussard and Cannon voluntarily dismissed the case, and it was approved by United States District Judge Abdul K. Kallon on April 6, 2012. Due to the nature of Qui Tam cases, the company has very little information on the exact allegations. The case is final and no action was taken against the company or the Directors or Officers.

VII) Qui Tam Case - Tampa

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenthner, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

United States District Court, Northern District of Alabama,

United States of America ex rel. Marilou Davis vs. Almost Family, Inc. Civil Action  
Number 2:11-cv-1097-AKK

A Qui Tam lawsuit was filed under seal on behalf of the United States by a former employee of Almost Family from Tampa alleging violations of Medicare billing procedures. The matter was moved to Birmingham, Alabama and was investigated by the FBI in conjunction with Civil Action Number 2:09-cv-01274-AKK. The government after review of documents decided not to pursue the case, and plaintiff Davis voluntarily dismissed the case, and it was approved by United States District Judge Abdul K. Kallon on April 11, 2012. Due to the nature of Qui Tam cases, the company has very little information on the exact allegations. The case is final and no action was taken against the company or the Directors or Officers.

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 1 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
GA	Notice of Intent	Suncrest Home Health		9/4/2014	SunCrest Home Health of Georgia, inc.	12/7/2013	\$450	Violations of Licensure Requirements
FL	Defaults and Dismissals	Almost Family	2014009314	10/13/2014	Almost Family PC of Fort Lauderdale, LLC	10/12/2007	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Almost Family	2012002151	4/30/2012	Almost Family PC of SW FL, LLC	10/12/2007	\$5,000	Failure to ensure background screening
FL	Defaults and Dismissals	Almost Family	2005002972	6/13/2005	Almost Family PC of SW Florida, LLC	1/1/2005	\$950	Late filing of license renewal application
FL	Defaults and Dismissals	Almost Family	2010002106	9/28/2010	Almost Family PC of West Palm, LLC	10/12/2007	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Almost Family	2005010630	3/9/2006	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$500	Late filing change of ownership
FL	Defaults and Dismissals	Apex Companion Care	2013001010	3/22/2013	Caretenders of Jacksonville, LLC	3/27/2008	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Apex Home Healthcare	2011004627	7/6/2011	Caretenders of Jacksonville, LLC	3/27/2008	\$5,000	Failure to submit quarterly report
FL	Settlement Agreements	Better @ Home	2010003904	12/13/2010	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Licensed agency failed to provide any required services during review period.
FL	Defaults and Dismissals	Better @ Home	2014008164	10/13/2014	Caretenders Visiting Services of Ocala, LLC	3/17/2006	\$200	Failure to submit quarterly report

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 2 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Better @ Home	2008003371	5/9/2008	Caretenders Visiting Services of Ocala, LLC	3/17/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Better @ Home	2007001718	4/26/2007	Caretenders Visiting Services of Ocala, LLC	3/17/2006	\$500	Late filing change of ownership
FL	Defaults and Dismissals	Caretenders	2006010018	3/29/2007	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Failure to contact physician
FL	Defaults and Dismissals	Caretenders	2005001840	6/14/2005	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$2,500	Late filing change of ownership
FL	Defaults and Dismissals	Caretenders	2007002197	4/12/2007	Mederi Caretenders VS of SE FL, LLC	12/3/2006	\$500	Late filing change of address
FL	Defaults and Dismissals	Caretenders	2007014130	6/6/2008	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Caretenders	2007005501	8/20/2007	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing change of address
FL	Defaults and Dismissals	Caretenders	2005004386	7/5/2005	ProCare Home Health of Broward, inc.	2/28/1994	\$250	Late filing of license renewal application
FL	Defaults and Dismissals	Caretenders Florida Palliative Home Care	2005005031	8/9/2005	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$500	Late filing change of ownership
FL	Defaults and Dismissals	Mederi Caretenders	2009012479	2/4/2010	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2009005419	10/6/2009	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$5,000	Failure to submit quarterly report

CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 3 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

Almost Family, Inc.  
 Enforcement Actions

Question 5.C

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Mederi Caretenders	2008014097	1/28/2009	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$200	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2010001783	6/8/2010	Caretenders Visiting Services of District 7, LLC	8/6/2003	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2007013214	3/31/2008	Caretenders Visiting Services of District 7, LLC	8/6/2003	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2014008150	10/10/2014	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$600	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2013008474	10/15/2013	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$3,400	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001691	3/30/2010	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001691	3/30/2010	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$5,000	Failure to submit quarterly report.
FL	Defaults and Dismissals	Mederi Caretenders	2014004810	7/3/2014	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$1,400	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001699	3/10/2010	Caretenders Visiting Services of Hernando County, LLC	10/26/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001696	3/10/2010	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2009011054	1/8/2010	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Failure to submit emergency management plan



**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 4 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Settlement Agreements	Mederi Caretenders	2009002454	8/27/2009	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2008004028	6/4/2008	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Settlement Agreements	Mederi Caretenders	2010001694	8/20/2010	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010003184	6/8/2010	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2008014421	2/25/2009	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2008000405	6/6/2008	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Late filing change of address
FL	Defaults and Dismissals	Mederi Caretenders	2007013227	3/31/2008	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2011001114	3/11/2011	Caretenders Visiting Services of Pinellas County, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2013008555	12/4/2013	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$2,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010011867	1/14/2011	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 5 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Mederi Caretenders	2010011550	1/14/2011	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2010011556	12/14/2010	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2010011557	12/14/2010	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application
FL	Settlement Agreements	Mederi Caretenders	2009002455	7/2/2009	Mederi Caretenders VS of SE FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2011001111	2/23/2011	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010007550	11/2/2010	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$3,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2009005420	10/7/2009	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2009002773	6/1/2009	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2008000542	6/6/2008	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2007014370	2/8/2008	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2007004542	6/19/2007	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing change of address

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 6 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Mederi Caretenders	2008001217	6/6/2008	Mederi Caretenders VS of SE FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Settlement Agreements	Mederi Caretenders Health and Rehab	2014007165	10/6/2014	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$500	Failure to furnish proof of financial ability to operate
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2006003554	10/23/2006	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$500	Late filing change of address
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2010002254	6/15/2010	Mederi Caretenders VS of Tampa, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2010002254	6/15/2010	Mederi Caretenders VS of Tampa, LLC	12/3/2006	\$5,000	Failure to submit quarterly report.
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2010000790	3/22/2010	Mederi Caretenders VS of Tampa, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Settlement Agreements	Suncrest Omni	2014008363	10/29/2014	OMNI Home Health - Hernando, LLC	12/7/2013	\$500	Failure to submit quarterly report
FL	Defaults and Dismissals	Suncrest Omni	2014005135	7/7/2014	OMNI Home Health District 2, LLC	12/7/2013	\$500	Late filing change of address

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Litson Health Care, Inc. d/b/a Willcare  
Address: Middletown  
County: Orange  
Structure: For-Profit Corporation  
Application Number: 2617-L

Description of Project:

Litson Health Care, Inc. d/b/a Willcare, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Litson Health Care, Inc. d/b/a Willcare was previously approved as a home care services agency by the Public Health Council at its May 2, 2008 meeting and subsequently licensed as 1704L001, 1704L002 and 1704L004.

A separate CHHA/LTHHCP CON application # 151118-E applies only to the Litson Certified Care, Inc., d/b/a Willcare CHHA and LTHHCP serving counties in the Lower Hudson Valley. CHHA/LTHHCP CON application # 151119-E has also been submitted to apply only to the Western Regional Health Corporation, d/b/a Willcare CHHA and LTHHCP serving counties in Western New York. In addition, LHCSA application # 2616-L has been submitted to apply only to the Litson Health Care, Inc., d/b/a Willcare LHCSA serving the Lower Hudson Valley, and LHCSA application # 2617-L has been submitted to apply only to the Willcare, Inc., d/b/a Willcare LHCSA serving Western New York. All four applications are being presented together for this Public Health and Health Planning Council meeting agenda.

The current proposal seeks approval for National Health Industries, Inc., a proprietary business corporation, to become the new parent corporation and new 100% sole stockholder of Bracor, Inc. Since the parent corporation and 100% sole stockholder of National Health Industries, Inc. is Almost Family, Inc., a publicly-traded proprietary business corporation, this proposal also seeks approval for Almost Family, Inc., to become the new grandparent corporation and ultimate controlling entity and stockholder of Bracor, Inc.

The direct corporate operator of the three (3) LHCSA locations will remain Willcare, Inc. d/b/a Willcare, the parent corporation will remain Bracor, Inc. d/b/a Willcare, as was previously approved by the Public Health Council. The new incoming great-grandparent corporation and controlling entity will now be National Health Industries, Inc., and the new incoming great-grandparent corporation and ultimate controlling entity will now be Almost Family, Inc. (Attachment A – Before and After Organizational Charts)

National Health Industries, Inc., a proprietary business corporation formed in Kentucky, is a wholly owned subsidiary of Almost Family, Inc., a publicly-traded proprietary business corporation formed in Delaware. Almost Family, Inc. owns 100% of the stock of National Health Industries, Inc. Almost Family, Inc., is authorized to issue 25,000,000 shares of common stock and 2,000,000 shares of preferred stock. Of the 25,000,000 shares of common stock, Almost Family, Inc., currently has 9,480,331 shares issued and outstanding, 94,000 shares held as treasury shares, and 15,425,669 shares unissued. Of the 2,000,000 shares of preferred stock, Almost Family, Inc., currently has no shares issued and outstanding, or held as treasury shares. All 2,000,000 shares of preferred stock are currently unissued. The 9,480,331 shares of issued and outstanding common stock are currently held by 281 shareholders of record and approximately 1500 additional shareholders owning stock through brokerage firms. The stockholders of Almost Family, Inc., are a diverse group of owners including individuals, private investment funds, and mutual funds. Shares of Almost Family, Inc. held by each fund are for the benefit of the fund's investors. Each fund's percentage of ownership in the corporation will vary from time to time.

Both mutual funds and private investment funds are required by the Securities and Exchange Commission (SEC) to disclose direct or indirect stock ownership of greater than 5% of a publicly traded corporation's outstanding stock. The applicant confirms that for SEC reporting purposes, two families of funds, FMR, LLC (Fidelity), and North Tide Capital, LLC, have filed disclosures with the SEC indicating they each possesses dispositive authority for greater than 10% of the outstanding shares of Almost Family, Inc., stock. Almost Family, Inc., has reviewed the relationship these two Limited Liability Company (LLC) family of funds has with the Almost Family, Inc. corporation, and has determined that, although each LLC family of funds is a greater than 10% owner of the corporation's stock, neither has any day-to-day role in the management activities of the corporation, neither has designated representation on the Board of Directors of the corporation, and neither has any control or input into any of the health care operations within the Almost Family, Inc. corporate structure. Pursuant to Delaware law, all affairs of Almost Family, Inc., are managed by, or under the direction of, the corporation's Board of Directors, elected annually by shareholder vote. The make-up of the current Board of Directors has remained unchanged since 2004, and the appointed Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer have all remained constant since 2002. In addition, anti-takeover provisions in the corporation's By-Laws, including advance notice requirements for Board of Directors nominations and any shareholder proposals, would discourage any one shareholder from assuming control of the corporation and any of its operations. Therefore, the applicant has determined that for this proposal, the governing body of Almost Family, Inc., has 100% control of National Health Industries, Inc., and no other individuals or legal entities will have any authority or operating control to influence any of the health care operations included in the Almost Family, Inc., corporate structure. In addition, both FMR, LLC, and North Tide Capital, LLC, have submitted signed statements that despite owning 10% or more of the publically traded stock of Almost Family, Inc., neither has a representative on, nor controls any member of, the Board of Directors of Almost Family, Inc., and neither has or would have the ability to exercise any control over, or to direct, or cause the directions of, the actions, management, or policies of Almost Family, Inc., or of the individual health care operations and providers that fall under the corporate jurisdiction of Almost Family, Inc.

Almost Family, Inc., operates over 170 home health care providers in over 245 separate practice locations in 14 states. The complete list of the affiliated home health care providers and their practice locations, by state, has been included in the application and a copy is attached (Attachment B – Almost Family Providers / Facilities). All providers listed are therefore affiliated with each board member, and each officer, named below. Other than FMR, LLC (Fidelity), and North Tide Capital, LLC, the two families of investment funds as noted above, there are no other stockholders owning 10% or more of the publicly traded stock of Almost Family, Inc.

The governing body of Almost Family, Inc., consists of the following members of the Board of Directors:

<p>William B. Yarmuth, Chairman Chairman &amp; CEO, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Henry M. Altman, Jr., CPA (KY), Director Owner/Financial Consultant, Altman Consulting, LLC (Financial Consulting)</p> <p><u>Affiliations:</u> Jewish Hospital and Healthcare Services (1983 – 2013)</p>
<p>Steven B. Bing, Director Executive Director, Kentucky Public Health Association and Kentucky Local Health Department Association (Health Care Provider Advocacy Associations)</p>	<p>Donald G. McClinton, Director Retired</p> <p><u>Affiliations:</u> Jewish Hospital and Healthcare Services, Louisville, KY (Hospitals System, 1994 – 2013)</p>

<p>Tyree G. Wilburn, MBA, Director Co-founder/Managing Partner, The Yearling Funds (Early Stage Venture Capital Funds)</p> <p><u>Affiliations:</u> Merit Health Systems, Louisville, KY (Owner/Operator of Hospitals System, 2003 – 2012)</p>	<p>Jonathan D. Goldberg, Esq. (KY) Managing Partner, Goldberg and Simpson, PLLC (Law Firm)</p>
<p>Walter Earl Reed, III, CPA (KY) President / Chief Executive Officer – Springstone, LLC (Psychiatric Hospitals)</p> <p><u>Affiliations:</u> Springstone, LLC, Louisville, KY (Owner/Operator of Psychiatric Hospitals, 2010 – Present), LifeCare Management Services, Plano, TX (Long Term Care Hospitals, 1998 – 2005)</p>	

Additional officers of Almost Family, Inc. are as follows:

<p>William B. Yarmuth, CEO (Disclosed Above)</p>	<p>Cletus Steven Guenther, President &amp; Principle Financial Officer, Almost Family, Inc. President and Principal Financial Officer – Almost Family, Inc., and National Health Industries, Inc.</p>
<p>Patrick Todd Lyles, MBA, Senior Vice President Senior VP for Administration, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Daniel Schwartz, Senior Vice President Senior VP and Chief Operating Officer, Almost Family, Inc. and National Health Industries, Inc.</p>
<p>Rajneesh Kaushal, Senior Vice President Senior VP and Chief Clinical Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Dana Case, CPA (KY, AL), Vice President VP for Internal Audit, Almost Family, Inc.</p>
<p>Denis B. Fleming, Jr., Esq. (KY), Vice President VP for Government Relations, Almost Family, Inc.</p>	<p>Catherine Pedigo, Vice President VP for Reimbursement, Almost Family, Inc. and National Health Industries, Inc.</p>
<p>Jeff Reibel, CPA (KY), Vice President VP for Finance and Chief Accounting Officer, Almost Family, Inc. and National Health Industries, Inc.</p>	<p>Mark F. Sutton, MBA, Vice President VP for Human Resources, Almost Family, Inc.</p>

The governing bodies of both National Health Industries, Inc., and of Bracor, Inc. following the proposed transaction, will be identical, and consist of the following members of the Board of Directors:

<p>William B. Yarmuth, Chairperson (Disclosed Above)</p>	<p>Cletus Steven Guenther (Disclosed above)</p>
<p>Patrick Todd Lyles (Disclosed Above)</p>	

Additional officers of both National Health Industries, Inc., and of Bracor, Inc. following the proposed transaction, will also be identical as follows:

William B. Yarmuth, Chief Executive Officer (Disclosed above)	Cletus Steven Guenther, President and Principal Financial Officer (Disclosed above)
Patrick Todd Lyles, Senior Vice President (Disclosed above)	Daniel J. Schwartz, Senior Vice President (Disclosed above)
Rajneesh Kaushal, Senior Vice President (Disclosed above)	Catherine Pedigo, Vice President (Disclosed above)
Jeffrey T. Reibel, Vice President (Disclosed above)	

The applicant proposes to serve the residents of the following counties from offices located at:

726 East Main Street, Suite 501, Middletown, New York 10950

Orange	Delaware	Dutchess	Putnam
Rockland	Sullivan	Ulster	Westchester

803 Grant Avenue, Lake Katrine, New York 12449

Ulster	Dutchess	Greene	Orange
Putnam	Rockland	Sullivan	Westchester

1343 Route 44, Pleasant Valley, New York 12569

Dutchess	Westchester	Orange	Putnam
Rockland	Sullivan	Ulster	

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker		

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bar Association of the State of Kentucky reports that the attorneys listed above are licensed in good standing with no disciplinary actions taken. In addition, the Kentucky Board of Accountancy, and the Alabama State Board of Public Accountancy, indicate there are no current issues with the licensure of the Certified Public Accountants listed above. The Kentucky Board of Accountancy does report that upon renewing his CPA license in 2014, Jeffrey T. Reibel had failed to complete the required hours of continuing education credits. He was allowed to renew his license, but was required to complete the required continuing education credit hours within 90 days, required to pay a civil penalty in the amount of \$500 within 30 days, and required to be subject to a continuing education audit review upon his next licensure renewal in 2016.

The applicant has provided the attached list of legal actions taken against Almost Family, Inc. (Attachment C – Almost Family Legal Actions). The applicant has also provided the attached list of enforcement actions taken, and monetary penalties imposed, against the home health care providers included in the Almost Family, Inc., corporate structure. (Attachment D – Almost Family Home Health Care Providers Enforcement Actions).

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated Willcare certified home health agencies (CHHAs), long term home health care programs (LTHHCPs), and licensed home care services agencies (LHCSAs) located in New York State, for the time period 2008 to 2015.

An enforcement action was taken in 2013 against Western Region Health Corporation, d/b/a Willcare, a CHHA located in Buffalo, based on a November 2012 survey, citing violations in Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; Policies and Procedures of Service Delivery; and Personnel. This action was resolved with a \$5,500 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

To date, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers included in the Almost Family, Inc. corporate structure, as listed on Attachment B: Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, and Tennessee. In addition, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the out-of-state health care providers listed as affiliations of individual board members and/or officers of Almost Family, Inc.: Arizona, Colorado, Florida, Illinois, Indiana, Louisiana, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. Out-of state enforcement actions that were reported by the states are as follows:

Florida reported that Caretenders Visiting Services of Gainesville, LLC, d/b/a Mederi Caretenders in Gainesville, had an administrative fine imposed in October 2014 due to an initial application deficiency, with no further information provided by the state. However, the applicant has provided an extensive list of Florida enforcement actions in Attachment D that provides further details regarding each of the citations and dollar fines imposed.

Georgia reported that SunCrest Home Health of Georgia, Inc., d/b/a SunCrest Home Health, a home health agency in Riverdale, was fine \$450 in January 2015 for violations of state home health agency regulations that were cited in September, 2014. This action was also included in Attachment D by the applicant.

Texas reported that Springstone, LLC's Mesa Springs, a psychiatric hospital in Fort Worth (individual board member affiliation) was assessed an administrative penalty of \$5000 in December, 2014, with no further information provided by the state.

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Almost Family, Inc., and National Health Industries, Inc., to adversely affect their positions on the boards or as officers. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

## **ATTACHMENTS**

Programmatic Attachment A	Willcare Before and After Organizational Charts
Programmatic Attachment B	Almost Family Providers / Facilities



Programmatic Attachment C Almost Family Legal Matters  
Programmatic Attachment D Almost Family Home Health Care Providers Enforcement Actions

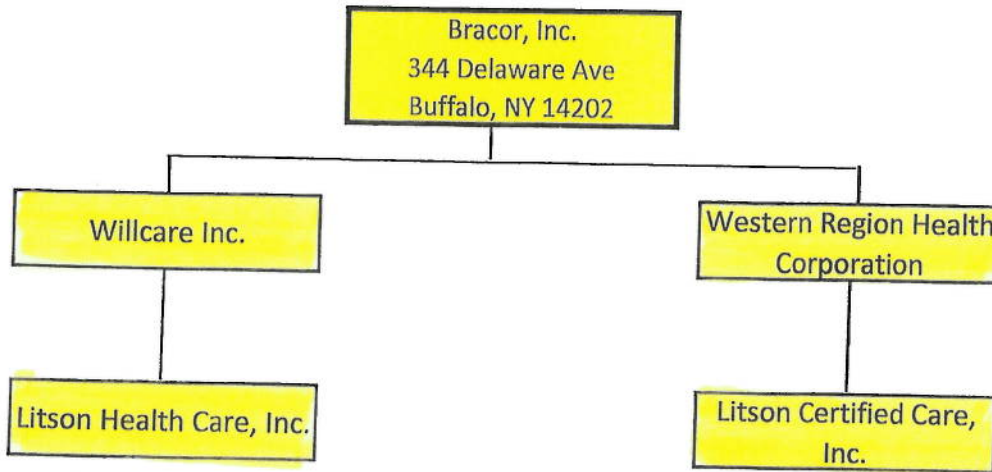
Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: May 22, 2015

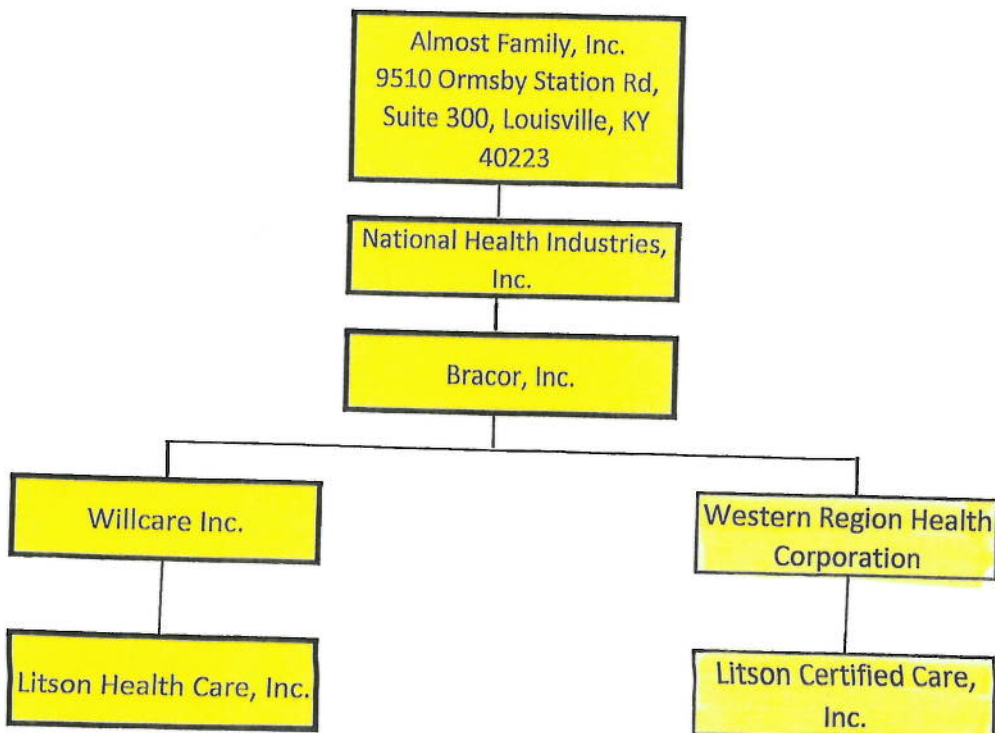
## Transaction Structure

### Current



Shareholders of Bracor, Inc. will sell their stock to National Health Industries. National Health Industries will then own Bracor, Inc. and its interest in Willcare, Inc., and Western Region Health Corporation. Willcare Inc. will continue to own its interest in Litson Health Care and Western Region Health Corporation will continue to own its interest in Litson Certified Care. Almost Family, Inc. is the Parent Public Company of National Health Industries, Inc.

### Proposed



CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 1 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
SunCrest Home Health of AL, Inc.	SunCrest Home Health	222-224 7th Street South	Clanton	AL	35045-3704	USA
Priority Care, Inc.	Patient Care	1344 Sias Deane Hwy	Rocky Hill	CT	06067-1342	USA
Priority Care, Inc.	Patient Care	185 Sias Deane Highway, 3rd Floor	Wethersfield	CT	06109	USA
Priority Care, Inc.	Patient Care	11 Lake Ave Ext., Suite 2W	Danbury	CT	06811-5258	USA
Priority Care, Inc.	Patient Care	3074 Whitnay Ave	Hamden	CT	06518-2391	USA
Priority Care, Inc.	Patient Care	1 Long Wharf Drive, Suite 102	New Haven	CT	06511-5991	USA
Priority Care, Inc.	Patient Care	120 East Ave, Ste 2E	Norwalk	CT	06851-5703	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	165 Standing Blvd., Suite 1	Orange Park	FL	32073-2624	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	6789 Southpoint Pkwy, Suite 200	Jacksonville	FL	32216-8206	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	2237 Riverside Avenue	Jacksonville	FL	32204-4619	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	1425 Hand Ave, Suite 1	Ormond Beach	FL	32174-1126	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	1775 Harkley Strickland Blvd, Suite 108	Orange City	FL	32763-7963	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	3550 Dunn Avenue, Suite 103	Jacksonville	FL	32216-6428	USA
Carelanders of Jacksonville, LLC	Apex Home Healthcare	6789 Southpoint Pkwy, Suite 200	Jacksonville	FL	32216-8206	USA
Carelanders Visiting Services of District 5, LLC	Mederi Carelanders	18591 Murreck Cir Ste 30A	Port Charlotte	FL	33948-1039	USA
Carelanders Visiting Services of District 6, LLC	Florida Home Health	201 2nd St East	Bradenton	FL	34209-1030	USA
Carelanders Visiting Services of District 6, LLC	Florida Home Health	2155 US 27	Selbring	FL	33870-4933	USA
Carelanders Visiting Services of District 6, LLC	Mederi Carelanders	8206 Manatee Ave W, Ste 100	Bradenton	FL	34205-7174	USA
Carelanders Visiting Services of District 6, LLC	Mederi Carelanders	308 S. 10th Street, Ste 340	Haines City	FL	33844-6602	USA
Carelanders Visiting Services of District 7, LLC	Mederi Carelanders	3205 West Eau Claire Blvd, Ste 103	Marlbourn	FL	32834-2235	USA
Carelanders Visiting Services of Gainesville, LLC	Mederi Carelanders	4823 NW 43rd Street, Suite A	Gainesville	FL	32608-4490	USA
Carelanders Visiting Services of Gainesville, LLC	Mederi Carelanders	3893 NW Dwyane St	Lake City	FL	32055-4841	USA
Carelanders Visiting Services of Gainesville, LLC	Mederi Carelanders	95 NW 253rd St	Newberry	FL	32669	USA
Carelanders Visiting Services of Gainesville, LLC	Better @ Home	210 South Lake Street, Suite 10	Leesburg	FL	34748-7370	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Carelanders	12106 Cortez Blvd	Brooksville	FL	34619-6514	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Carelanders	3900 Crill Avenue	Palatka	FL	32177-9171	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Carelanders	1980 Prevatt Street	Eustis	FL	32726	USA
Carelanders Visiting Services of Hernando County, LLC	Mederi Carelanders	2212 Highway 44 West	Inverness	FL	34453-3860	USA
Carelanders Visiting Services of Hernando County, LLC	Better @ Home	1554 Bella Cruz Dr	Ledy Lake	FL	32759-9969	USA
Carelanders Visiting Services of Ocala, LLC	Better @ Home	8590 SW Highway 200, Unit 5	Ocala	FL	34491-7703	USA
Carelanders Visiting Services of Ocala, LLC	Better @ Home	1333 SE 25th Loop, Suite 102	Ocala	FL	34471-1072	USA
Carelanders Visiting Services of Orlando, LLC	Mederi Carelanders	474 S. Northlake Blvd	Aitamaha Springs	FL	32701-6245	USA
Carelanders Visiting Services of Orlando, LLC	Mederi Carelanders	1187 Miranda Lane	Kissimmee	FL	34714-0763	USA
Carelanders Visiting Services of Pinellas County, LLC	Mederi Carelanders	6445 162nd Avenue North	Pinellas Park	FL	33782-3027	USA
Carelanders Visiting Services of Pinellas County, LLC	Mederi Carelanders	2430 Estancia Blvd, Suite 201	Clearwater	FL	33761-2044	USA
Carelanders Visiting Services of St. Augustine, LLC	Community Home Health	301 Health Park Blvd., Suite 110	St. Augustine	FL	32086-5794	USA
Mederi Carelanders VS of Broward, LLC	Mederi Carelanders	4901 NW 17th Way, Suite 104	FL Lauderdale	FL	33309-3770	USA
Mederi Carelanders VS of Broward, LLC	Mederi Carelanders	4 Harvard Circle, Ste 650	West Palm Beach	FL	33409-1990	USA
Mederi Carelanders VS of SE FL, LLC	Mederi Carelanders	1285 36th Street, Suite 201	Yero Beach	FL	32960-6368	USA
Mederi Carelanders VS of SE FL, LLC	Mederi Carelanders	1900 SE Port St. Lucie Blvd Morningdale Professional Plaza	Port St. Lucie	FL	34952-7576	USA
Mederi Carelanders VS of SW FL, LLC	Mederi Carelanders	6160 Diamond Center Court, Suite A	St. Myer	FL	33912-7147	USA
Mederi Carelanders VS of SW FL, LLC	Mederi Carelanders	3459 Pine Ridge Rd #801	Naples	FL	34106-3838	USA
Mederi Carelanders VS of Tampa, LLC	Quality of Life Home Care Services	3500 E. Fletcher Ave Suite 100	Tampa	FL	33613-4701	USA
Mederi Carelanders VS of Tampa, LLC	Quality of Life Home Care Services	1476 Town Center Dr Suite 211	Lakeland	FL	33802-7374	USA
OMNI Home Health- District 1, LLC	SunCrest OMNI	8800 University Parkway, Ste G-3	Pensacola	FL	32514-4928	USA
OMNI Home Health- District 2, LLC	SunCrest OMNI	1617 Tennessee Ave	Lynn Haven	FL	32244-3652	USA
OMNI Home Health- District 2, LLC	SunCrest OMNI	2343 Hansen Ln	Tallahassee	FL	32301-4898	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	4359 South Suncoast Boulevard	Honnasassa	FL	34446-1181	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	1097 US Hwy 90 W, Suite 140	Lake City	FL	32055-3740	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	4045 NW 43rd Street, Suite B	Gainesville	FL	32606-6098	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	3200 SW 34th Avenue, Suite 301	Ocala	FL	34474-7463	USA
OMNI Home Health- Hernando, LLC	SunCrest OMNI	700 Zealor Dr, Suite 6	Palatka	FL	32177-3826	USA
OMNI Home Health- Jacksonville, LLC	SunCrest OMNI	9143 Phillips Highway, Suite 170	Jacksonville	FL	32256-1361	USA
OMNI Home Health- District 4, LLC	St. Vincent's Home Health	2651 Park Street	Jacksonville	FL	32204-4319	USA
Home Health Agency- Pinellas, LLC	Mederi Carelanders	7615 Little Road	New Port Richey	FL	34654-6525	USA
Home Health Agency- Hillsborough, LLC	Florida Home Health	139 South Pebble Beach Blvd, Suite 201	Sun City Center	FL	33573-4712	USA
Home Health Agency- Hillsborough, LLC	Florida Home Health	1802 59th Street West	Bradenton	FL	34209-4630	USA
Home Health Agency- Collier, LLC	Mederi Carelanders	5260 Station Way, Bld B	Sarasota	FL	34233-3232	USA

CON Projects: #151118-E & #151119-E  
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 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
BGR Acquisition, LLC	Community Home Health	475 West Town Place, Suite 100	St. Augustine	FL	32092-3649	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	2440 Lake Park Dr., Ste 119	Smryna	GA	30060-8993	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	905A Interstate Ridge Drive	Gainesville	GA	30601-7074	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	6109 Highway 278 NE, Suite C	Covington	GA	30014-2608	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	23 Upper Riverdale Road Southwest, Suite 130	Riverdale	GA	30274-2818	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	1916 South 9th Street	Griffin	GA	30224-4111	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	245 Bullock Drive, Suite D & E	Newnan	GA	30263-3168	USA
SunCrest Home Health of Georgia, Inc.	SunCrest Home Health	1737D Hodgson Memorial Drive, Suite A7	Savannah	GA	31406-2536	USA
SunCrest Home Health of South GA, Inc.	SunCrest Home Health	110 E. 4th Street	Adel	GA	31620-2730	USA
SunCrest Home Health-Boothville, LLC	SunCrest Home Health	7840 Roswell Rd., Ste 215	Atlanta	GA	30380-8877	USA
Caretenders Visiting Services of Southern Illinois, LLC	Mederi Caretenders	141 Market Place Dr Suite 110	Fairview Heights	IL	62726-2034	USA
Caretenders Visiting Services of Southern Illinois, LLC	Mederi Caretenders	438 Memorial Drive	Breese	IL	62230-1096	USA
Caretenders Visiting Services of Southern Illinois, LLC	Mederi Caretenders	4202 Williamson Place, Suite 1	MT Vernon	IL	62864-6760	USA
Homa Health Agency- Illinois, LLC	OMNI Home Care	1724 State Street	Mokena	IL	60448-8135	USA
Caretenders Visiting Services of Kentuckiana, LLC	Caretenders	63 Quartermaster Court	New Albany	IN	47160-4604	USA
Caretenders Visiting Services of Kentuckiana, LLC	Caretenders	522 Franklin Street	Jeffersonville	IN	47130-3623	USA
IN Homecare Network North, LLC	Angels of Mercy Homecare	1400 N. Webster St, Suite 100	Columbus	IN	47201-6214	USA
IN Homecare Network North, LLC	Angels of Mercy Homecare	444 Mall Rd, Suite 1	Marion	IN	46952-1300	USA
IN Homecare Network North, LLC	Angels of Mercy Homecare	2280 Providence Ct, Suite D	Logansport	IN	46947-2242	USA
IN Homecare Network North, LLC	Indiana Homecare Network	3705 N. Briarwood Ln	Warsaw	IN	46850-3284	USA
IN Homecare Network Central, LLC	Angels of Mercy Homecare	5128 E. Stop 11 Rd Suite 37	Muncie	IN	47304-6361	USA
Caretenders Visiting Services of Kentuckiana, LLC	Angels of Mercy Homecare	611 E. 4th St, Suite 111	Indianapolis	IN	46237-6336	USA
Homa Health Agency- Indiana, LLC	OMNI Home Care	111 Sawwood Road	Huntingburg	IN	47542-1360	USA
Homa Health Agency- Indiana, LLC	OMNI Home Care	800 N. Weinbach Ave, Suite 610	Richmond	IN	47374-6091	USA
Caretenders VS of Central KY, LLC	Caretenders	2432 Regency Road, Suite 180	Evansville	IN	47711-6976	USA
Caretenders VS of Central KY, LLC	Caretenders	101 Medical Heights Drive Suite 0	Lexington	KY	40503-2889	USA
Caretenders VS of Central KY, LLC	Caretenders	101 Ponder Ct, Suite A	Frankfort	KY	40601-4137	USA
Caretenders VS of Central KY, LLC	Caretenders	5008 Abundant Drive, Ste. 1	Danville	KY	40422-9007	USA
Caretenders VS of Central KY, LLC	Caretenders	1571 Park Rd Ste F	Richmond	KY	40475-8184	USA
Caretenders VS of Western KY, LLC	Caretenders	2200 East Parish Ave, Bldg. E, Suite 203	Georgetown	KY	40324-8804	USA
Caretenders VS of Western KY, LLC	Caretenders	1630 Sycamore St.	Owensboro	KY	42303-1448	USA
Caretenders VS of Western KY, LLC	Caretenders	352 East Center Street	Henderson	KY	42420-3384	USA
Caretenders VS of Western KY, LLC	Caretenders	112 McMurry Street, Suite 2	Madisonville	KY	42431-2136	USA
Caretenders VS of Western KY, LLC	Coldwell Comply Hospital Home Health Agency	1310 US Highway 62 West	Hartford	KY	42347	USA
Caretenders VS of Louisville, LLC	Caretenders	4545 Bishop Lane, Suite 200	Pineville	KY	42445-6106	USA
Caretenders VS of Louisville, LLC	Caretenders	1653 Hwy 44 East, Ste. 1	Louisville	KY	40218-4574	USA
Caretenders VS of Louisville, LLC	Caretenders	2206 Commerce Pkwy, Suite A	Shepardsville	KY	40365-7853	USA
Caretenders VS of Louisville, LLC	Caretenders	1165 Eastern Parkway, Suite 3323	LaGrange	KY	40331-6781	USA
Caretenders VS of Louisville, LLC	Caretenders	197 Alpine Drive	Louisville	KY	40217-1415	USA
Caretenders VS of Louisville, LLC	Caretenders	9702 Stonestreet Road, Medical Office Bldg. 1, Suite 330	Shelbyville	KY	40365-6876	USA
Caretenders VS of Lincoln Trail, LLC	Caretenders	1105 Juliana Court, Ste. 3	Louisville	KY	40272-6820	USA
Caretenders VS of Lincoln Trail, LLC	Caretenders	835A Chambers Blvd	Elizabethtown	KY	42701-7037	USA
Caretenders VS of Lincoln Trail, LLC	Caretenders	1270 Old Elkon Road, Suite C	Brandenburg	KY	40004-2575	USA
Caretenders VS of Central KY, LLC	Caretenders of Northern KY	169 Barrow Drive, Suite A	Brandenburg	KY	40168-3345	USA
Trigg County Home Health, Inc.	SunCrest Home Health	72 Lone Oak Drive	Edgewood	KY	41017-2801	USA
Caretenders VS of Boston, LLC	Caretenders	29 Crafts Street, Suite 330	Cadiz	KY	40221-6520	USA
Caretenders VS of Boston, LLC	Caretenders	401 Andover Street, Suite 102	Newton	MA	02458-1271	USA
Caretenders VS of Boston, LLC	Caretenders	287 Temple Road, Suite 285	North Andover	MA	01845-5076	USA
Caretenders VS of Boston, LLC	Caretenders	222 Forbes Road, Suite 102	Westborough	MA	01581	USA
Caretenders VS of Boston, LLC	Caretenders	330 Whitney Ave, Ste 120	Baldwin	MA	02184-2718	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	655 Craig Road, Suite 140	Holyoke	MA	01940-2859	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	83 North Craig, Ste. B	Creve Coeur	MO	63141-7168	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	1041 Pegasus Crossing Court, Suite B	Sullivan	MO	63030-1606	USA
Caretenders Visiting Services of St. Louis, LLC	Mederi Caretenders	8410 Wise Ave	O'Fallon	MO	63366-2362	USA
Patient Care New Jersey, Inc.	Patient Care	6 Brighton Rd Ste 107	Saint Louis	MO	63139-3315	USA
Patient Care New Jersey, Inc.	Patient Care	400 Morris Ave, Ste. 218	Clifton	NJ	07012-1604	USA
Patient Care New Jersey, Inc.	Patient Care	365 West Passaic Street	Denville	NJ	07834-1362	USA
Patient Care New Jersey, Inc.	Patient Care	795 Franklin Ave., Ste C201	Rochelle Park	NJ	07662-3012	USA
			Franklin Lakes	NJ	07477-1368	USA

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 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA/Name	Address	City	ST	Zip	Country
Patient Care Medical Services, Inc.	Patient Care	300 Executive Drive, Suite 175	West Orange	NJ	07052-0377	USA
Patient Care Medical Services, Inc.	Patient Care	495 N. 79th Street, Suite 24-2-1	Newark	NJ	07107-1317	USA
Caretenders VS of Ohio, LLC	Caretenders VNA	1221 East Main Street	Lancaster	OH	43139-4058	USA
Caretenders VS of Ohio, LLC	Caretenders VNA	1900 Crown Park Court, Suite C	Columbus	OH	43205-2407	USA
Caretenders of Cleveland, Inc.	Caretenders	23611 Chagrin Blvd, Suite 130	Beachwood	OH	44122-5540	USA
Caretenders of Cleveland, Inc.	Caretenders	1225 E. Waterloo Road	Akron	OH	44306-3805	USA
Caretenders of Cleveland, Inc.	Caretenders	18600 Jefferson Park Rd, Suite 103	Middleburg Heights	OH	44130-3488	USA
Caretenders of Cleveland, Inc.	Caretenders	130 Churchill-Hubbard Rd	Youngstown	OH	44505-1323	USA
Caretenders of Cleveland, Inc.	Caretenders	4565 Dressler Road N.W., Suite LL02	Carlton	OH	44718-2594	USA
Caretenders of Cleveland, Inc.	Caretenders	2502 Hubbard Road	Madison	OH	44057	USA
Caretenders of Cleveland, Inc.	Caretenders	20600 Chagrin Blvd, Suite 290	Shaker Heights	OH	44122-5344	USA
Caretenders Visiting Services of Columbus, LLC	Caretenders VNA	1515 Bethel Road	Columbus	OH	43226-1804	USA
Caretenders VNA of Ohio, LLC	Caretenders VNA	1450 Columbus Avenue, Suite 102	Washington Courthouse	OH	43160-1867	USA
Caretenders VS of SE Ohio, LLC	Caregivers Health Network	9812 Center Rd Ste 100	Blue Ash	OH	45242-6541	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	4840 Hebbes Ave NW	Canton	OH	44718-2528	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	523 West Main Ave	New Philadelphia	OH	44663	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	210 East Morrow, Suite C	Wooster	OH	44691	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	1098-B East State Street	Salon	OH	44480	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	2615 Sunset Boulevard	Steubenville	OH	43952-1115	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	700 Park Ave West	Mansfield	OH	44896-3009	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	314 South Main Street	Mount Vernon	OH	43050	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1630 East Way	Ashland	OH	44895	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	165 W. Center St, Ste 401	Marietta	OH	43902-3741	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1848 State Route 59, Suite 101	Kent	OH	44240-8113	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	2819 South Hayes Ave Suite 10	Sandusky	OH	44870-5391	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1204 E Broad St	Elviria	OH	44625-6308	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	7043 Peed Road, Suite 260	Middleburg Heights	OH	44126	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	1130 Vesnot Ave	Springfield	OH	45503-7302	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	7028 Old Troy Pike	Huber Heights	OH	45424-2750	USA
Cambridge Home Health Care, Inc.	Cambridge Caretenders	1100 Brandwynn Blvd, Ste E, 1st Fl	Zanesville	OH	43701	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	103 Scammell Street	Marietta	OH	45750	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	1300 Clark St, Suite 7	Cambridge	OH	43725-8875	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	213 Columbus Road, Suite 103	Athens	OH	45701	USA
Cambridge Home Health Care, Inc./Private	Cambridge Caretenders	1948 Tamarack Road	Newark	OH	43055-1300	USA
Patient Care Pennsylvania, Inc.	Patient Care	2201 Ridgecroft Road, Suite 210	Wyncamersing	PA	19610-1496	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	3583 East State St	Hickamberg	PA	16146-3450	USA
Cambridge Home Health Care, Inc.	Cambridge Home Health Care	1140 N. Main Street Ext	Butler	PA	16001	USA
Home Health Agency- Pennsylvania, LLC	OMNI Home Care	806 North Bell Ave, Suite 130	Camasie	PA	16105-4324	USA
Home Health Agency- Central Pennsylvania, LLC	OMNI Home Care	221 Hospital Drive, Suite 2	Tyone	PA	16866-1808	USA
Home Health Agency- Central Pennsylvania, LLC	OMNI Home Care	6310 Allentown Blvd, Ste 100	Harrisburg	PA	17112-2735	USA
Home Health Agency- Central Pennsylvania, LLC	OMNI Home Care	673 Clara Lane	York	PA	17402-4317	USA
Home Health Agency- Philadelphia, LLC	OMNI Home Care	872 Jenkintown Road, Suite 2	Elkins Park	PA	19027-1649	USA
Home Health Agency- Philadelphia, LLC	OMNI Home Care	5000 Timpana St Suite 110	Allentown	PA	18106-6167	USA
Home Health Agency- Philadelphia, LLC	OMNI Home Care	Belway Commons, 426 Alport Road, Suite 136	Hazel Township	PA	18202-3361	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	2606 Corporate Avenue, Suite 201	Memphis	TN	38132-1768	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	608-C Tennessee Street	Bolivar	TN	38608-2443	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	1310 East College Street	Brownsville	TN	38012-1657	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	442 Highway 51 North, Suite G	Covington	TN	38019-2374	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	2007 Oak Tree Cove	Hernando	MS	38632-1183	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	491 B Craft Street	Holly Springs	MS	38635-3251	USA
SunCrest Healthcare of West Tennessee, LLC	Homechoice Health Services	2603 Corporate Ave., Suite 250	Memphis	TN	38132-1716	USA
SunCrest Home Health of Nashville, Inc.	SunCrest Home Health	2292 Dalton Dr., Suite A	Clarksville	TN	37043-8960	USA
SunCrest Home Health of Nashville, Inc.	SunCrest Home Health	899 Highway 70 E	Dickson	TN	37055-2158	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	1210 Briarville Road, Building D	Madison	TN	37115-5141	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	1886 General George Patton Drive, Suite 500	Franklin	TN	37067-4608	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	12124 Highway 52W Suite 2	Westmoreland	TN	37186-3245	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	168 Cude Lane	Madison	TN	37115-2202	USA
SunCrest Healthcare of Middle TN, LLC	SunCrest Home Health	600 West Nashville Pike, Suite 200	Gallatin	TN	37066-7140	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	471 West Broad Street	Smithville	TN	37166-1116	USA

CON Projects: #151118-E & #151119-E  
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 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	451 Vada Dr, Sparta Medical Office Complex	Sparta	TN	38583-1299	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	345 S. Jefferson Street, Suite 201	Cookeville	TN	38501-3492	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	828 McMinnville Highway	Woodbury	TN	37180-1241	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	417 North Chancery Street	McMinnville	TN	37110-2048	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	1312 W. Main Street, Suite A	Lebanon	TN	37087-3284	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	499 Caywood Road	Tazewell	TN	37789-3026	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	105 W. Stone Dr.	Kingsport	TN	37660-3385	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	857 Broadway Ste B	Jefferson City	TN	37760-4949	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Hospice	409 Caywood Road	Tazewell	TN	37789-3026	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	1914 McArthur Street	Manchester	TN	37355-2624	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	1313 Colquhoun Boulevard, Suites 4 & 5	Shebville	TN	37160-2789	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	155 Hospital Rd., Suite B	Winchester	TN	37398-2485	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	215 Castlewood Drive, Suite C	Murfreesboro	TN	37129-5164	USA
Adult Day Care of America, Inc.	ADC of America	211 State Street, 3rd Floor	Bridgeport	CT	06604	USA
Adult Day Care of America, Inc.	ADC of America	11 Lake Ave Ext., Suite 2W	Danbury	CT	06811-5258	USA
Adult Day Care of America, Inc.	ADC of America	17R Boston Post Rd Unit 2	Waterford	CT	06095-2431	USA
Adult Day Care of America, Inc.	ADC of America	76 Center Street, 2nd Floor East	Waterbury	CT	06897-4429	USA
Adult Day Care of America, Inc.	ADC of America	1 Long Wharf Drive, Suite 102	New Haven	CT	06511-5991	USA
Adult Day Care of America, Inc.	ADC of America	1150 Summer Street	Stamford	CT	06906-5330	USA
Almost Family PC of FL Lauderdale, LLC	Almost Family	1344 Silas Oestre Highway	Rocky Hill	CT	06067-1342	USA
Almost Family PC of SW Florida, LLC	Almost Family	5440 NW 24th Ave, Suite 111	FL Lauderdale	FL	33309-8941	USA
Almost Family PC of SW Florida, LLC	Almost Family	5280 Station Way, Bldg 6	Sarasota	FL	34233-3232	USA
Almost Family PC of West Palm, LLC	Almost Family	851 5th Ave North, Suite 101	Naples	FL	34102-5582	USA
Almost Family PC of West Palm, LLC	Almost Family	4 Harvard Circle, Ste 500	West Palm Beach	FL	33408	USA
Caretenders Visiting Services of St. Augustine, LLC	Apex Companion Care	6780 Southgolf Pkwy, Suite 200B	Jacksonville	FL	32216-8208	USA
Caretenders Visiting Services of St. Augustine, LLC	Apex Companion Care	313 Wilmetta Ave, Suite 4	Ormond Beach	FL	32174-8105	USA
SunCrest Home Health of Tampa, LLC	SunCrest OAH	200 S. Hoover Blvd, Suite 160	Tampa	FL	33609-3597	USA
Almost Family PC of Kentucky, LLC	Almost Family	2432 Reschey Road, Suite 180	Lexington	KY	40505-2989	USA
Almost Family PC of Kentucky, LLC	Almost Family	4545 Bishop Lane, Suite 200	Louisville	KY	40216-4574	USA
Almost Family PC of Kentucky, LLC	Almost Family	168 Barnwood Drive, Suite A	Edgewood	KY	41017-2597	USA
Almost Family PC of SE Ohio, LLC	Caregivers Health Network	2200 E. Parish Ave., Bldg E, Suite 202	Owensboro	KY	42303-1449	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	5912 Carver Rd Ste 100	Blue Ash	OH	45242-5541	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	20800 Chagrin Blvd, Suite 250	Shaker Heights	OH	44122-5245	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	1225 E. Waterloo Road	Akron	OH	44308-3805	USA
Caretenders of Cleveland, Inc.	Almost Family Medlink	18000 Jefferson Park Rd, Suite 102	Hillsburg Heights	OH	44130-3440	USA
Caretenders of Columbus, Inc.	Almost Family	4565 Dressler Road N.W., Suite LL02	Canton	OH	44718-2584	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	1900 Crown Park Court, Suite C	Columbus	OH	43235-2407	USA
Cambridge Home Health Care, Inc	Cambridge Home Health Care	213 Columbus Road, Suite 103	Albans	OH	45701	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	4840 Hebe Ave NW	Canton	OH	44718-2528	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	74 North Troy Pike	Chillicothe	OH	45601	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	7025 Old Troy Pike	Huber Heights	OH	45424-2760	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	1204 East Broad Street	Elyria	OH	44035-6302	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	118 South Main Street	Findlay	OH	45540	USA
Cambridge Home Health Care, Inc	Cambridge Home Health Care	780 Park Ave West	Mansfield	OH	44806-3009	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	165 W. Center St, Ste 401	Marion	OH	43302-3741	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	520 East Smith Rd	Medina	OH	44256-2638	USA
Cambridge Home Health Care, Inc	Cambridge Home Health Care	7043 Pearl Road, Suite 260	Middleburg Heights	OH	44130	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	1949 Tamarsck Road	Newark	OH	43055-1300	USA
Cambridge Home Health Care, Inc	Cambridge Home Health Care	1948 State Route 59, Suite 101	Ken	OH	44240-8113	USA
Cambridge Home Health Care, Inc	Cambridge Home Health Care	1130 Vester Ave	Springfield	OH	45503-7302	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	2615 Sunset Blvd	Steubenville	OH	43982	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	1574 Henthorn Dr, Suite B	Maumee	OH	43537-3821	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	8536 Crow Dr, Suite 230	Macedonia	OH	44026-1900	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	5423 Mahoning Avenue, Suite C	Austintown	OH	44515	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	2819 South Hayes Avenue, Suite 10	Pelee	OH	44870-5391	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	1100 E-A Brandywine Blvd	Zanesville	OH	43701-7933	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	3553 East State St	Hermitage	PA	16148-3450	USA
Cambridge Home Health Care, Inc/Private	Cambridge Home Health Care	1140 N. Main Street Ext.	Butler	PA	15001	USA

CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment B – Page 5 of 5  
 Almost Family – Providers/Facilities

Attachment 1.2  
 Schedule 1  
 List of Facilities Outside NY State

Almost Family, Inc.  
 Home Health Care Facilities

Legal Name	DBA Name	Address	City	ST	Zip	Country
SunCrest Companion Services, LLC		168 Cude Lane	Madison	TN	37116-2202	USA
SunCrest Healthcare of East Tennessee, LLC	SunCrest Home Health	117 C East Bryant Street	Smithville	TN	37166-1339	USA
SunCrest Home Health of Manchester, Inc.	SunCrest Home Health	1914 McArthur Street	Manchester	TN	37355-2624	USA
SunCrest Home Health of Nashville, Inc.	SunCrest Home Health	2282 Dalton Dr Suite A	Clarksville	TN	37043-8950	USA
Tennessee Nursing Services of Morristown, Inc.	SunCrest Home Health	857 Broadway Ste B	Jefferson City	TN	37760	USA
Mederi Caretenders VS of Broward, LLC	Mederi Caretenders	4901 NW 17th Way Suite 104	Pt. Lauderdale	FL	33309-3770	USA
Mederi Caretenders VS of SE FL, LLC	Mederi Caretenders	1906 SE Peft St. Lucie Blvd Morningside Professional Plaza	Port St. Lucie	FL	34952-7575	USA
Mederi Caretenders VS of SE FL, LLC	Mederi Caretenders	4 Harvard Cr, Ste 950	West Palm Beach	FL	33409-1890	USA
Caretenders Visiting Services of Orlando, LLC	Mederi Caretenders	3600 West Eau Gallie Blvd, Suite 103	Melbourne	FL	32934-3285	USA
Caretenders Visiting Services of District 6, LLC	Mederi Caretenders	18501 Muntlock Cr, Suite 308	Port Charlotte	FL	33848-1038	USA
Caretenders of Jacksonville, LLC	Apex Health and Rehab Center	6789 Southpoint Pkwy, Suite 200	Jacksonville	FL	32216-8205	USA
Caretenders Visiting Services of Gainesville, LLC	Mederi Caretenders Health & Rehab	8109 NW 27th Blvd	Gainesville	FL	32606-8836	USA
SunCrest Outpatient Rehab Services, LLC	SunCrest Rehab Services	9143 Phillips Highway, Suite 170	Jacksonville	FL	32258-1381	USA

The individuals affiliated with Almost Family, Inc. making this Change of Ownership application have not personally had any convictions, administrative actions or allegations related to malpractice, fraud, breach of fiduciary responsibility, Medicare or Medicaid actions or penalties, civil or criminal actions, convictions as defined in this application. The Directors and Officers of Almost Family are reporting the following legal actions that they were involved with as a result of their position with Almost Family, Inc. over the last 10 years.

**I) Senate Finance Committee Investigation**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenther, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

An article about home health care reimbursement was published in the Wall Street Journal on April 27, 2010. This article made some general allegations about the home health industry, and eventually led to Almost Family, Inc. and three other public home health companies to receiving notification from the U.S. Senate, Committee on Finance that it had opened an investigation into the home health reimbursement policies, and was requested that Almost Family provide documents in response to the investigation. The company fully complied with the request from the Senate Finance Committee, and ultimately provided over 1.1 million documents to the committee for review over a several month period of time.

The Senate Finance Committee issued a Staff Report *Home Health and Medicare Therapy Threshold* on October 3, 2011. While generally unfavorable to the industry, the Committee did note that “none of the documents provided to the Committee by Almost Family show that executives ever pushed therapist to target thresholds or pursue more profitable clinical regimens.” The company has completed its work in response to this investigation, and no action was taken against the company.

**II) U. S. Securities and Exchange Commission Investigation**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenther, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

On June 30, 2010, Almost Family received notice from the U.S. Securities and Exchange Commission that it was conducting an investigation (HO-11425) of Almost Family, Inc. and a Subpoena was issued requesting documents submitted to the Senate Finance Committee, along with additional documents. We believe the theory of the investigation was the company’s financial statements would have been misstated if the allegations being investigated by the Senate Finance Committee were true.

On November 2, 2012, Almost Family received letters from the U.S. Securities and Exchange Commission notifying the company that “we do not intend to recommend any enforcement action by the Commission. We are providing this information under guidelines in the final paragraph of Securities Act Release No. 5310.”



**III) U. S. Securities and Exchange Commission Investigation**

Applies to Directors Yarmuth, McClinton, Reed, Wilburn,  
Applies to Officers Guenther,

On June 30, 2010, Almost Family received notice from the U.S. Securities and Exchange Commission that it was conducting an investigation (HO-11425) of Almost Family, Inc. In addition on October 20, 2011 Directors McClinton, Reed and Wilburn, and on December 15, 2011 Director Yarmuth, and Office Guenther received subpoena seeking information about their sales of Almost Family, Inc. stock.

On November 2, 2012, the above named Directors and Officers received letters from the U.S. Securities and Exchange Commission notifying them that “we do not intend to recommend any enforcement action by the Commission. We are providing this information under guidelines in the final paragraph of Securities Act Release No. 5310.”

**IV) Derivative Lawsuit**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

On July 14, 2010, a derivative lawsuit was filed against Almost Family, Inc. and the Directors and Officers of Almost Family, Inc. by Daniel Himmel in Jefferson Circuit Court Division, Louisville, Kentucky Case Number 10CI004892. This lawsuit was then followed by additional shareholder lawsuits that simply reiterated that there was an article in the Wall Street Journal alleging inappropriate billing and reimbursement practices, and that the company was under investigation by the both Senate Finance Committee and the S.E.C.

The lawsuits in general lacked specific allegations of wrong doing by the company, and the company undertook appropriate actions to defend the each of the above. All of these matters were disclosed in the public filing of Almost Family, Inc. to the United States Securities and Exchange Commission on forms 10Q and 10K as the matters were in process.

On December 15, 2012 the Derivative lawsuit of Daniel Himmel was consolidated with the other lawsuits filed by Jared White, Norman Cohen and Richard Margolis on behalf of Almost Family v. the Board of Directors of Almost Family, with Civil Action 10-CI-004892 being the sole surviving case.

Almost Family, Inc. filed a Motion to Dismiss based on Demand Futility on February 13, 2012. The Court Granted the Company’s Motion to Dismiss on October 2, 2012.

On October 30, 2012, the plaintiffs appealed the decision to the Kentucky Court of Appeals, (Case No. 2012-CA-001926-MR) and on March 1, 2013 submitted their brief to the Court. The Company filed its response brief on April 20, 2013.

On July 17, 2013 while the decision was pending with the Kentucky Court of Appeals, shareholder Cohen served a demand letter on the Board. The demand letter alleged the same arguments of the shareholder derivative suits, and requested the Board take action against certain individuals for violating the fiduciary duties. In response to the demand letter, the Board appointed a Special Committee to investigate the allegations, and filed a Motion to Dismiss with the Kentucky Court of Appeals based on the appeal being moot. The Special Committee hired outside legal counsel, and completed an investigation and filed its report on June 3, 2014. After review of the Special Committee report, the parties made a joint Motion to Dismiss the case, and the Kentucky Court of Appeals granted the Motion on September 9, 2014. The case is final and no action was taken against the company or the Directors.

**V) Shareholder Derivative Lawsuits**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

United States District Court, Western District of Kentucky,  
Richard W. Carey vs. Almost Family, Inc. and the Board of Directors, Case No. 3:11-cv00163. While the other shareholder derivative lawsuits were filed in Kentucky State Court, this shareholder elected to file his case in Federal Court. In the lawsuit Almost Family Inc. filed a Motion to Stay the case while other derivative state court lawsuits proceeded in the Kentucky court system. An Order was entered by Judge John Heyburn August 15, 2011 to Stay to case. The lawsuit was Dismissed with Prejudice on November 5, 2014. The case is final and no action was taken against the company or the Directors

**VI) Qui Tam Case - Birmingham**

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenther, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

United States District Court, Northern District of Alabama,  
Janice Jordan Broussard and Venice Pruitt Cannon ex. rel. United States of America vs. Almost Family, Inc. Civil Action Number 2:09-cv-01274-AKK  
A Qui Tam lawsuit was filed under seal on behalf of the United States by two former employees of Almost Family alleging violations of Medicare billing procedures. The matter was investigated by the FBI, and Almost Family provided documents in response to a subpoena. The government after review of documents decided not to pursue the case, and plaintiffs Broussard and Cannon voluntarily dismissed the case, and it was approved by United States District Judge Abdul K. Kallon on April 6, 2012. Due to the nature of Qui Tam cases, the company has very little information on the exact allegations. The case is final and no action was taken against the company or the Directors or Officers.

VII) Qui Tam Case - Tampa

Applies to Directors Yarmuth, Altman, Bing, Goldberg, McClinton, Reed, Wilburn.

Applies to Officers Guenthner, Lyles, Case, Fleming, Kaushal, Pedigo, Reibel, Schwartz, Sutton.

United States District Court, Northern District of Alabama,

United States of America ex rel. Marilou Davis vs. Almost Family, Inc. Civil Action  
Number 2:11-cv-1097-AKK

A Qui Tam lawsuit was filed under seal on behalf of the United States by a former employee of Almost Family from Tampa alleging violations of Medicare billing procedures. The matter was moved to Birmingham, Alabama and was investigated by the FBI in conjunction with Civil Action Number 2:09-cv-01274-AKK. The government after review of documents decided not to pursue the case, and plaintiff Davis voluntarily dismissed the case, and it was approved by United States District Judge Abdul K. Kallon on April 11, 2012. Due to the nature of Qui Tam cases, the company has very little information on the exact allegations. The case is final and no action was taken against the company or the Directors or Officers.

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 1 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
GA	Notice of Intent	Suncrest Home Health		9/4/2014	SunCrest Home Health of Georgia, inc.	12/7/2013	\$450	Violations of Licensure Requirements
FL	Defaults and Dismissals	Almost Family	2014009314	10/13/2014	Almost Family PC of Fort Lauderdale, LLC	10/12/2007	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Almost Family	2012002151	4/30/2012	Almost Family PC of SW FL, LLC	10/12/2007	\$5,000	Failure to ensure background screening
FL	Defaults and Dismissals	Almost Family	2005002972	6/13/2005	Almost Family PC of SW Florida, LLC	1/1/2005	\$950	Late filing of license renewal application
FL	Defaults and Dismissals	Almost Family	2010002106	9/28/2010	Almost Family PC of West Palm, LLC	10/12/2007	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Almost Family	2005010630	3/9/2006	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$500	Late filing change of ownership
FL	Defaults and Dismissals	Apex Companion Care	2013001010	3/22/2013	Caretenders of Jacksonville, LLC	3/27/2008	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Apex Home Healthcare	2011004627	7/6/2011	Caretenders of Jacksonville, LLC	3/27/2008	\$5,000	Failure to submit quarterly report
FL	Settlement Agreements	Better @ Home	2010003904	12/13/2010	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Licensed agency failed to provide any required services during review period.
FL	Defaults and Dismissals	Better @ Home	2014008164	10/13/2014	Caretenders Visiting Services of Ocala, LLC	3/17/2006	\$200	Failure to submit quarterly report

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 2 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Better @ Home	2008003371	5/9/2008	Caretenders Visiting Services of Ocala, LLC	3/17/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Better @ Home	2007001718	4/26/2007	Caretenders Visiting Services of Ocala, LLC	3/17/2006	\$500	Late filing change of ownership
FL	Defaults and Dismissals	Caretenders	2006010018	3/29/2007	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Failure to contact physician
FL	Defaults and Dismissals	Caretenders	2005001840	6/14/2005	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$2,500	Late filing change of ownership
FL	Defaults and Dismissals	Caretenders	2007002197	4/12/2007	Mederi Caretenders VS of SE FL, LLC	12/3/2006	\$500	Late filing change of address
FL	Defaults and Dismissals	Caretenders	2007014130	6/6/2008	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Caretenders	2007005501	8/20/2007	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing change of address
FL	Defaults and Dismissals	Caretenders	2005004386	7/5/2005	ProCare Home Health of Broward, inc.	2/28/1994	\$250	Late filing of license renewal application
FL	Defaults and Dismissals	Caretenders Florida Palliative Home Care	2005005031	8/9/2005	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$500	Late filing change of ownership
FL	Defaults and Dismissals	Mederi Caretenders	2009012479	2/4/2010	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2009005419	10/6/2009	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$5,000	Failure to submit quarterly report

CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 3 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

Almost Family, Inc.  
 Enforcement Actions

Question 5.C

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Mederi Caretenders	2008014097	1/28/2009	Caretenders Visiting Services of District 6, LLC	8/6/2003	\$200	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2010001783	6/8/2010	Caretenders Visiting Services of District 7, LLC	8/6/2003	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2007013214	3/31/2008	Caretenders Visiting Services of District 7, LLC	8/6/2003	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2014008150	10/10/2014	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$600	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2013008474	10/15/2013	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$3,400	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001691	3/30/2010	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001691	3/30/2010	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$5,000	Failure to submit quarterly report.
FL	Defaults and Dismissals	Mederi Caretenders	2014004810	7/3/2014	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$1,400	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001699	3/10/2010	Caretenders Visiting Services of Hernando County, LLC	10/26/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010001696	3/10/2010	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2009011054	1/8/2010	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Failure to submit emergency management plan

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 4 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Settlement Agreements	Mederi Caretenders	2009002454	8/27/2009	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2008004028	6/4/2008	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Settlement Agreements	Mederi Caretenders	2010001694	8/20/2010	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010003184	6/8/2010	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2008014421	2/25/2009	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2008000405	6/6/2008	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Late filing change of address
FL	Defaults and Dismissals	Mederi Caretenders	2007013227	3/31/2008	Caretenders Visiting Services of Orlando, LLC	10/27/2004	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2011001114	3/11/2011	Caretenders Visiting Services of Pinellas County, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2013008555	12/4/2013	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$2,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010011867	1/14/2011	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application

**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 5 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Mederi Caretenders	2010011550	1/14/2011	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2010011556	12/14/2010	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2010011557	12/14/2010	Mederi Caretenders VS of Broward, LLC	12/3/2006	\$300	Late filing of license renewal application
FL	Settlement Agreements	Mederi Caretenders	2009002455	7/2/2009	Mederi Caretenders VS of SE FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2011001111	2/23/2011	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2010007550	11/2/2010	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$3,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2009005420	10/7/2009	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2009002773	6/1/2009	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Mederi Caretenders	2008000542	6/6/2008	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2007014370	2/8/2008	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Defaults and Dismissals	Mederi Caretenders	2007004542	6/19/2007	Mederi Caretenders VS of SW FL, LLC	12/3/2006	\$500	Late filing change of address



**CON Projects: #151118-E & #151119-E  
 LHCSA Applications: #2616-L & #2617-L  
 Programmatic Attachment D – Page 6 of 6  
 Almost Family – Home Health Care Providers Enforcement Actions**

Attachment 2.1  
 Schedule 2A.2  
 Enforcement Actions

**Almost Family, Inc.  
 Enforcement Actions**

**Question 5.C**

St	Document Type	Provider Name	Case Number	Date Rendered	Legal Entity	Almost Family Entity Since	Fine Amount	Reason for Fine
FL	Defaults and Dismissals	Mederi Caretenders	2008001217	6/6/2008	Mederi Caretenders VS of SE FL, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Settlement Agreements	Mederi Caretenders Health and Rehab	2014007165	10/6/2014	Caretenders Visiting Services of Gainesville, LLC	2/18/2005	\$500	Failure to furnish proof of financial ability to operate
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2006003554	10/23/2006	Caretenders Visiting Services of Hernando County, LLC	12/3/2006	\$500	Late filing change of address
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2010002254	6/15/2010	Mederi Caretenders VS of Tampa, LLC	12/3/2006	\$5,000	Failure to submit quarterly report
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2010002254	6/15/2010	Mederi Caretenders VS of Tampa, LLC	12/3/2006	\$5,000	Failure to submit quarterly report.
FL	Defaults and Dismissals	Quality Of Life Home Care Services	2010000790	3/22/2010	Mederi Caretenders VS of Tampa, LLC	12/3/2006	\$500	Late filing of license renewal application
FL	Settlement Agreements	Suncrest Omni	2014008363	10/29/2014	OMNI Home Health - Hernando, LLC	12/7/2013	\$500	Failure to submit quarterly report
FL	Defaults and Dismissals	Suncrest Omni	2014005135	7/7/2014	OMNI Home Health District 2, LLC	12/7/2013	\$500	Late filing change of address

Licensed Home Care Service Agency  
Character and Competence Staff Review

Name of Agency: Morningside Acquisition III, LLC, d/b/a Morningside at Home  
 Address: Bronx  
 County: Bronx  
 Structure: Limited Liability Company  
 Application Number: 2288L

Morningside Acquisition III, LLC, d/b/a Morningside at Home, a Limited Liability Company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Morningside at Home, Inc. was previously approved as a home care services agency by the Public Health Council at its May 23, 1997 meeting and subsequently licensed as 9943L001.

This LHCSA will be associated with an Assisted Living Program (ALP) which will be operated Morningside Acquisition III, LLC d/b/a Morningside at Home Assisted Living Program.

The members of Morningside Acquisition III, LLC are:

<p>Pasquale DeBenedictis - 35%          Director of Finance, Carillon Nursing and Rehabilitation Center          Accounting &amp; Finance, Theradynamics Rehabilitation</p> <p>Affiliations:          Barnwell Nursing &amp; Rehabilitation          East Neck Nursing &amp; Rehabilitation          Mills Pond Nursing and Rehabilitation Center          Morningside Nursing and Rehabilitation Center          Peninsula Nursing and Rehabilitation Center          Sayville Nursing and Rehabilitation Center          Shore View Nursing and Rehabilitation Center          Workmens Circle Multi-Care Center          Cassena Care of Norwalk, LLC (Connecticut)</p>	<p>Alex Solovey, PT – 35%          Director of Rehabilitation, Theradynamics Rehabilitation</p> <p>Affiliations:          Barnwell Nursing &amp; Rehabilitation          East Neck Nursing &amp; Rehabilitation          Mills Pond Nursing and Rehabilitation Center          Morningside Nursing and Rehabilitation Center          Peninsula Nursing and Rehabilitation Center          Sayville Nursing and Rehabilitation Center          Shore View Nursing and Rehabilitation Center          Workmens Circle Multi-Care Center          Cassena Care of Norwalk, LLC (Connecticut)</p>
<p>Joseph F. Carillo, II - 10%          Administrator, Carillon Nursing &amp; Rehabilitation</p> <p>Affiliations:          Barnwell Nursing &amp; Rehabilitation          Carillon Dialysis Center          Carillon Nursing &amp; Rehabilitation Center          East Neck Nursing &amp; Rehabilitation          Mills Pond Nursing and Rehabilitation Center          Morningside Nursing and Rehabilitation Center          Sayville Nursing and Rehabilitation Center          Workmens Circle Multi-Care Center</p>	<p>Soloman Rutenberg - 20%          CEO, Workmens Circle Multi-Care Center</p> <p>Affiliations:          Morningside Nursing and Rehabilitation Center          Peninsula Nursing and Rehabilitation Center          Shore View Nursing and Rehabilitation Center          Workmens Circle Multi-Care Center          Cassena Care of Norwalk, LLC (Connecticut)</p>

The Bureau of Professional Credentialing has indicated that Joseph F. Carillo II, holds a Nursing Home Administrator (NHA) license #03713, in good standing. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

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

The applicant proposes to serve the residents of Bronx County from an office located at 1000 Pelham Parkway South, Bronx, NY 10461:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A 7 year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

Barnwell Nursing and Rehabilitation Center  
Carillon Dialysis Center  
Carillon Nursing and Rehabilitation Center  
East Neck Nursing and Rehabilitation Center  
Mills Pond Nursing and Rehabilitation Center (10/1/2010-present)  
Morningside Nursing and Rehabilitation Center (RHCF and LTHHCP) (7/2014-present)  
Peninsula Nursing and Rehabilitation Center (9/2014-present)  
Sayville Nursing and Rehabilitation Center (12/2012-present)  
Shore View Nursing and Rehabilitation Center (6/2014-present)  
Workmens Circle MultiCare Center  
Cassena Care of Norwalk (Connecticut)

Barnwell Nursing & Rehabilitation Center was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated January 12, 2014 for surveillance findings of March 13, 2012. Deficiencies were found under 10 NYCRR Sections 415.12(h)(1) Quality of Care: Accidents and Supervision

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the dialysis center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the Long Term Home Health Care Program reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Connecticut reported that Cassena Care of Norwalk was fined one thousand and twenty dollars (\$1,020) pursuant to a stipulation and order dated November 15, 2013 for an investigation findings completed in September 2013. Deficiencies were found under the Regulation of Connecticut State Agencies (Public Health Code) section 19-13-D8t (f) Administrator (3) and/or (j) Director of Nurses (2) and/or (m)(2)(c).

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency:

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July 3, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of August, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

<u>NUMBER:</u>	<u>FACILITY:</u>
1968 L	Finecare Homecare, Inc. (New York, Kings, Queens and Bronx Counties)
1972 L	Beth Israel Homecare Inc., d/b/a American Homecare in NY (New York, Kings, Queens, Bronx, Richmond and Nassau Counties)
2217 L	Savi's Homecare Services, Inc. (Bronx, Kings, Queens, Richmond, New York and Westchester Counties)
2251 L	Samaritan Services, Inc. (Kings, Queens, Bronx, Richmond, New York and Westchester Counties)

- 2258 L Epic Home Care, LLC  
(Westchester, Putnam, Rockland, Sullivan, Dutchess,  
Ulster and Orange Counties)
- 2265 L Curatio Health Care Systems, LLC d/b/a Curatio Home  
Care Services  
(Bronx, Kings, Queens, Richmond, New York and  
Westchester Counties)
- 2273 L Caresense Health, LLC  
(Kings, Queens, New York, Bronx and Nassau  
Counties)
- 2298 L Brarr Inc. d/b/a Home Helpers & Direct Link of Staten  
Island 58669  
(Richmond County)
- 2376 L Warm Touch Home Care, LLC  
(Queens, Kings, Bronx, New York, Richmond and  
Nassau Counties)
- 2382 L Amazing Grace Home Care Solutions, LLC  
(Albany, Schenectady and Rensselaer Counties)
- 2386 L Reliable Home Care Service Corp.  
(Bronx, Kings, Queens, Richmond and New York  
Counties)
- 2390 L Long Island Licensed Home Health Care Agency, LLC  
(Queens County)
- 2398 L Mason & Bugayeva Home Care Services, Inc.  
(Kings, Bronx, Queens and New York Counties)
- 2408 L Inspired Inhouse Health Care, Inc.  
(Queens, Bronx, Kings, Richmond, New York and  
Nassau Counties)
- 2420 L Care for Seniors, LLC d/b/a Home Instead Senior Care  
(Richmond, Kings and New York Counties)
- 2421 L Accolade Care, Inc.  
(New York, Kings, Queens, Bronx and Richmond  
Counties)

- 2422 L JJ Wells Company, LLC d/b/a Nurse Next Door  
Manhattan  
(New York County)
- 2426 L Bantam Enterprises, Inc. d/b/a Right at Home  
(Westchester, Rockland, Orange, Putnam, Sullivan,  
Ulster, Dutchess, Nassau, Suffolk and Bronx Counties)
- 2428 L Golden Promises Home Care LLC  
(Westchester, Rockland, Orange, Putnam, Sullivan,  
Ulster, Dutchess, Nassau, Suffolk and Greene  
Counties)
- 2431 L KB HomeCare, Inc. d/b/a Visiting Angels  
(Westchester and Putnam Counties)
- 2439 L Thelus Specialty Care Agency, LLC  
(Suffolk, Nassau, Westchester, Rockland and Queens  
Counties)
- 2453 L Caring Connections, LLC  
(Rockland County)
- 2470 L Centercare Home Care Agency, LLC  
(Queens, New York, Bronx, Kings, Richmond and  
Nassau Counties)
- 2476 L Infinite Care, Inc.  
(Kings, Queens, Richmond, New York, Bronx and  
Nassau Counties)
- 2486 L Jefferson's Ferry Home Care, Inc.  
(Suffolk and Nassau Counties)
- 2648 L Columbia County Department of Health  
(Columbia County)
- 2598L Wavecrest HFA, Inc. d/b/a Wavecrest Home Care  
(Queens County)
- 2599L Parkview HFA, Inc. d/b/a Parkview Home Care  
(Bronx County)
- 2613L Woodland Village, LLC d/b/a Fawn Ridge Home Care  
(Albany, Columbia, Fulton, Rensselaer, Saratoga,

Schenectady, Schoharie, Warren, Washington and Dutchess Counties)

2286L Attentive Home Care Agency, Inc. d/b/a Always Home Care  
(Bronx, Kings, Nassau, New York, Richmond and Queens Counties)

2313L AHS Criticare, LLC  
(Bronx, Kings, Nassau, New York, Queens and Richmond Counties)

2315L Universal Health Care, LLC d/b/a At Your Side Home Care Services  
(Bronx, Kings, New York, Queens, Richmond and Nassau Counties)

2373L Platinum Home Health Care, Inc.  
(Nassau, Bronx, Kings, New York, Queens and Richmond Counties)

2506L Effective Home Care, L.L.C.  
(Bronx, Kings, New York, Queens, Richmond and Westchester Counties)

2530L Angel Care, Inc.  
(Bronx, Kings, New York, Queens, Richmond and Nassau Counties)

2567L HCS Home Care of Westchester, Inc. d/b/a A&J Home Care  
(Putnam and Westchester Counties)

2616L Willcare, Inc. d/b/a Willcare  
(See exhibit for list of Counties served)

2617L Litson Health Care, Inc. d/b/a Willcare  
(See exhibit for list of Counties served)

2288L Morningside Acquisition III, LLC d/b/a Morningside at Home  
(Bronx County)

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: AHS Criticare, LLC  
Address: Richmond Hill  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2313-L

Description of Project:

AHS Criticare, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Criticare Helping Hands, LLC was previously approved as a home care services agency by the Public Health Council at its September 7, 2007 meeting and subsequently licensed 1560L001.

The proposed sole member of AHS Criticare, LLC:

Simon Aronshtein – Managing Member  
Operations Manager, At Home Solutions, LLC

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

Criticare Helping Hands, LLC has proposed to enter into a management agreement with AHS Criticare, LLC which is currently under review by the Department of Health.

The applicant proposes to serve the residents of the following counties from an office located at 111-02 Jamaica Avenue, Richmond Hill, New York 11418.

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Respiratory Therapy	Occupational Therapy	Speech-Language Pathology
Physical Therapy		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: April 28, 2015



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of August, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

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Nassau Counties)
- 2486 L Jefferson's Ferry Home Care, Inc.  
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- 2648 L Columbia County Department of Health  
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(Queens County)
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(See exhibit for list of Counties served)

2288L Morningside Acquisition III, LLC d/b/a Morningside at Home  
(Bronx County)



**Project # 151186-B**  
**Premier Ambulatory Services Development Company, LLC**  
**d/b/a Premier Ambulatory Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Erie  
**Purpose:** Establishment and Construction    **Acknowledged:** April 29, 2015

**Executive Summary**

**Description**  
 Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Premier), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgery center (ASC) initially specializing in ophthalmology and gastroenterology procedures. Premier will lease 6,925 square feet of space in a multi-tenant building located at 2816 Pleasant Avenue, Hamburg (Erie County). The ASC will include two operating rooms (one class C and one Class B), plus eight pre-op/post-op beds along with the requisite support areas.

The proposed members of Premier Ambulatory Services Development Company, LLC and their ownership percentages are as follows:

Premier Ambulatory Services Development Company, LLC	
<u>Members:</u>	<u>%</u>
Vishal Sharma, M.D.	50%
Nisha Sharma, M.D.	50%

**OPCHSM Recommendation**  
 Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

**Need Summary**  
 The number of projected procedures is 1,800 in Year 1 with Medicaid at 6.2% and charity care at 2.0%.

**Program Summary**  
 Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

**Financial Summary**  
 Project cost of \$495,218 will be met as follows: \$60,218 in members' equity and \$435,000 via a five-year term bank loan at 5% interest. A letter of interest has been provided by First Niagara Bank.

**Budget:**

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,341,136	\$1,421,478
Expenses	<u>\$1,186,777</u>	<u>\$1,224,885</u>
Net Income	\$154,359	\$196,593

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payer source;
  - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided; and
  - Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. 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]

7. Construction must start on or before November 1, 2015 and construction must be completed by March 1, 2016, presuming approval to start construction is been granted prior to commencement. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
8. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]

Council Action Date  
**August 6, 2015**

## Need Analysis

### Analysis

The service area consists of Erie County. Erie County has a total of seven freestanding multi-specialty ASC's and two freestanding single-specialty ASC's. The table below shows the number of patient visits at ambulatory surgery centers in Erie County for 2013 and 2014.

ASC Type	Name of Facility	Total Patients 2013	Total Patients 2014
Multi	Ambulatory Surgery Center of Western New York LLC	13,291	15,102
Multi	Buffalo Ambulatory Surgery Center	10,093	10,273
Multi	Buffalo Surgery Center, LLC	4,822	5,100
Multi	Center for Ambulatory Surgery LLC	10,201	10,026
Multi	Endoscopy Center of Western New York, LLC	10,259	10,892
Single	Eye Health Associates Inc.	4,119	4,221
Multi	Millard Fillmore Surgery Center, LLC	6,049	5,437
Multi	Sterling Surgical Center, LLC	5,472	5,564
Single	WNY Medical Management (opened 4/2013)	401	584
<b>Total</b>		<b>64,707</b>	<b>67,199</b>

Source: SPARCS-2015

For Erie County, the total number of patient visits was 64,707 in 2013 and 67,199 in 2014. This represents an approximately 4% year-to-year increase in the number of patients served by ambulatory surgery centers in Erie County.

The number of projected procedures is 1,800 in Year 1 and 1,908 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Premier Ambulatory Surgery Center for Year 1 and Year 3.

Projections	Year 1 Procedures	Year 1 %	Year 3 Procedures	Year 3 %
Commercial Ins	992	55.1%	1,051	55.1%
Medicare	660	36.7%	700	36.7%
Medicaid	112	6.2%	119	6.2%
Private Pay	0	0.0%	0	0.0%
Charity Care	36	2.0%	38	2.0%
<b>Total</b>	<b>1,800</b>	<b>100.0%</b>	<b>1,908</b>	<b>100.0%</b>

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will provide additional access to surgical services in an Article 28 setting for the residents of Erie County and neighboring areas.

### Recommendation

**From a need perspective, contingent approval is recommended for a limited period of five years.**



## Program Analysis

### Project Proposal

Premier Ambulatory Services Development Company, LLC, d/b/a Premier Ambulatory Surgery Center, seeks approval to establish and construct an Article 28 freestanding multi-specialty ambulatory surgery center procedures to be located at 2816 Pleasant Avenue in Hamburg (Erie County).

<b>Proposed Operator</b>	Premier Ambulatory Services Development Company, LLC
<b>Doing Business As</b>	Premier Ambulatory Surgery Center
<b>Site Address</b>	2816 Pleasant Avenue Hamburg, NY (Erie County)
<b>Surgical Specialties</b>	Multi-Specialty: Ophthalmology Gastroenterology
<b>Operating Rooms</b>	2 (Class B – 1, Class C – 1)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 3:00 p.m. Weekend and/or evening surgery will be available, if needed, to accommodate patient scheduling issues.
<b>Staffing (1st Year / 3rd Year)</b>	6.4 FTEs / 6.4 FTEs
<b>Medical Director(s)</b>	Vishal Sharma, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Erie County Medical Center 17 miles / 20 minutes
<b>On-call service</b>	Calls to the surgeon's service will be directed to the surgeon or to another physician of the surgeon's specialty on-call.

### Character and Competence

The members of Premier Ambulatory Services Development Company, LLC are:

<b>Name</b>	<b>Percentage</b>
Nisha Sharma, MD	50%
Vishal Sharma, MD	50%

Drs. Sharma are both practicing physicians with roughly ten years of experience in their respective fields. Dr. Nisha Sharma is board-certified in Family Medicine and Dr. Vishal Sharma is a board-certified ophthalmologist.

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.

### Integration with Community Resources

The medical staff members will require that their patients, whenever possible, have a medical clearance appointment with a primary care physician prior to surgery. If a primary care relationship does not exist, the members will encourage the establishment of one. The facility plans to reach out to primary care physicians and physician groups in its service area to inform them about the facility and its capabilities, including its participation with Medicare and Medicaid. The facility is committed to creating a program that facilitates access to all populations and they will serve all patients needing care regardless of their ability to pay or the source of payment.

The applicant plans on utilizing an Electronic Medical Record (EMR) and would consider becoming part of an Accountable Care Organization or Medical Home if one were to develop in its service area. Additionally, the facility would also consider participating in a Regional Health Information Organization (RHIO) or Health Information Exchange (HIE).

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

<h2>Financial Analysis</h2>
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**Total Project Cost and Financing**

The total project cost for telecommunications, movable equipment, and fees is estimated at \$495,218, broken down as follows:

Other fees	\$20,000
Telecommunications	\$38,000
Movable Equipment	\$432,520
Application Fees	\$2,000
Additional Processing Fees	<u>\$2,698</u>
<b>Total Project Cost</b>	<b>\$495,218</b>

Financing for this project will be as follows:

Members Equity	\$60,218
Bank loan (five-year term at 5% interest)	<u>\$435,000</u>
<b>Total</b>	<b>\$495,218</b>

A letter of interest has been provided by First Niagara Bank.

**Lease Rental Agreement**

The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Date:	April 7, 2015
Premises:	6925 sq. ft., located at 2816 Pleasant Avenue, Hamburg, NY
Landlord:	Sharma Development, LLC
Lessee:	Premier Ambulatory Services Development Company, LLC
Term:	15 years with two five-year renewal options
Rental:	\$273,537 annually (39.50 per sq. feet), A 2% increase in rent per year beginning the 11th year
Provisions:	Taxes, Utilities, Insurance, Maintenance fee.

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

The applicant has also submitted two letters from NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid-MC	\$53,008	\$56,256
Medicare -MC	\$458,160	\$486,022
Commercial-MC	822,768	871,560
Charity	<u>7,200</u>	<u>7,640</u>
Total Revenue	\$1,341,136	\$1,421,478
 <u>Expenses:</u>		
Operating	\$794,580	\$842,825
Capital	<u>392,197</u>	<u>382,060</u>
Total Expense	\$1,186,777	\$1,224,885
 Net Income	 \$154,359	 \$196,593
 Total Visits	 1,800	 1,908
Total Cost Per Visits	659.32	641.97

Utilization by payor source for Years 1 and 3 is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commerical-MC	992	55.1%	1,051	55.1%
Medicare-MC	660	36.7%	700	36.7%
Medicaid-MC	112	6.2%	119	6.2%
Charity Care	<u>36</u>	<u>2.0%</u>	<u>38</u>	<u>2.0%</u>
Total	1,800	100.0%	1,908	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current payment rates by payor for ambulatory ophthalmology and gastroenterology procedures.
- Utilization assumptions are based the number of outpatient case that Dr. Vishal Sharma, a board-certified ophthalmologist, and Dr. Jihad Miqdadi, a board-certified gastroenterologist, will transfer from other facilities including: Sterling Surgical Center, Buffalo General Hospital, Sister's Hospital, Lake Shore Medical Center and West Seneca Center for Ambulatory Surgery. Both physicians have provided a letters supporting the year one utilization.
- Expense assumptions are based on the historical experience of similar service D&TCs in the proposed FASC's service area, adjusted for operating the facility three days a week. The breakeven point is approximately 88% or 1,592 visits in ear one.

## Capability and Feasibility

The total project cost of \$495,218 will be satisfied from \$60,218 in members' equity with the \$435,000 balance being provided through a loan at the above stated terms. First Niagara Bank has provided a letter of interest.

Working capital requirements are estimated at \$204,147 based on two months of third year expenses. The applicant will provide \$104,147 from the members' equity. The remaining \$100,000 will be satisfied through a five-year loan at 5% interest rate from First Niagara Bank. BFA Attachments A is members' net worth summary which shows the members have sufficient liquid resources to meet both the project's equity and working capital requirements.

BFA Attachment B is the pro-forma balance sheet for Premier Ambulatory Services Development Company, LLC that shows operation will start off with \$169,667 in members' equity.

The submitted budget projects a net income of \$154,359 and \$196,593 during years one and three of operations, respectively. Medicare reimbursement was based on the 2014 Medicare fee schedule. Based upon the physicians' historical experience, commercial reimbursement for ophthalmology and gastroenterology was estimated at 118% and 158% of the of Medicare case rate. Medicaid Manage Care payment was estimated at 90% of Medicare case rate. The budget appears reasonable.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

Supplemental Information
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Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** TLC Health Network Lake Shore Hospital  
845 Routes 5 & 20  
Irving, New York 14081

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
40%	<u>Inpatient</u> 5% of volume	<u>Ambulatory</u> 95% of volume	1,768	Not indicated

TLC Health Network (TLC) opposes the application, stating that the proposed ASC would result in a loss of a vast majority of the 1,768 cases currently performed at TLC Lake Shore by the two applicant physicians. This would result in a loss of \$2,090,023 in net patient revenues annually, which represents 8.6 percent of TLC's 2014 total net patient revenue. The hospital states that ambulatory surgery represents over 95 percent of total surgical volume at TLC Lake Shore and contends that the proposed ASC would have a "disastrous" effect on the financially fragile TLC system and seriously threaten its ability to continue providing quality health care to the community. The hospital does not describe the community-oriented services that would be affected by the projected loss of revenues to the ASC.

TLC also contends that there is no need for the proposed ASC because of the hospital's current operating room utilization of less than 40 percent, which indicates an abundant capacity for growth. TLC also cites the presence of several other nearby ASCs, in Orchard Park, Amherst and other parts of Erie County, whence 42 percent of TLC's patients come. The TLC Lake Shore hospital itself is located just 20 minutes from the site of the proposed ASC.

TLC filed for Chapter 11 bankruptcy in December, 2013. In 2013, TLC had current assets of \$8.8 million on current liabilities of \$16.6 million, for a ratio of 0.53. In 2014 current assets totaled \$6.0 million while current liabilities came to \$14.4 million, for a ratio of 0.42. (In both 2013 and 2014, current liabilities included liabilities subject to compromise by the United States Bankruptcy Court.) In 2013, TLC had revenues of \$33.2 million on expenses of \$43.5 million, for an operating loss of \$10.3 million. TLC experienced \$1.5 million in bad debt and provided \$1.6 million in charity care. In 2014, TLC had revenues of \$25.1 million on expenses of \$32.6 million for an operating loss of \$7.5 million. In 2014, TLC experienced \$1.2 million in bad debt and provided \$1.3 million in charity care.

**Facility:** Sisters of Charity Hospital -- **No Response**  
2157 Main Street  
Buffalo, NY 14214

**Facility:** Mercy Hospital -- **No Response**  
565 Abbott Road  
Buffalo, NY 14220

**Facility:** Bertrand Chaffee Hospital -- **No Response**  
224 East Main Street  
Springville, NY 14141

#### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that the proposed ASC will provide ambulatory surgery services to patients of physicians on its medical staff who elect to use the ASC to perform their outpatient surgeries. Surgeries performed at the ASC would otherwise be performed at area hospitals or other ambulatory surgery centers. In addition, the applicant points out that there are no freestanding ASCs in the Town of Hamburg, a fast-growing southern Erie County community, or in Chautauqua County, where many of the applicant ophthalmologist's patients reside. The applicant also expects that patients will prefer to have their surgeries performed at a new, patient-friendly, state-of-the-art ambulatory surgery center. In addition to enhanced patient satisfaction, the applicant expects that there will be a high level of physician satisfaction as a result of the ASC's seeking to accommodate its medical staff's scheduling, equipment selection and staffing preferences.

**Staff Recruitment and Retention:** The applicant states that employees will be recruited from accredited schools and training programs as well as through advertisements in local newspapers and professional publications. The ASC may hire some of its nursing staff from one of the applicant physician's medical practice. The ASC plans to offer competitive salary and benefits and will maintain good human resource and communication systems. In addition, the Center will provide a positive work environment and flexible working hours.

**Office-Based Cases:** The applicant states that none of the cases projected for the proposed ASC are currently performed in office settings. The anticipated 800 ophthalmological procedures are currently performed in a proprietary freestanding ASC, while the expected 1,000 gastroenterological procedures are currently distributed among three hospitals (Buffalo General Medical Center, Sisters of Charity Hospital and TLC Lake Shore Hospital) and the West Seneca Center for Ambulatory Surgery.

#### DOH Comment

TLC Health Network's comments in opposition to the application assume that a vast majority of the 1,768 procedures currently performed at TLC Lake Shore Hospital by the applicant physicians would be lost to the proposed ASC. However, this assumption is at odds with the applicant's statement that the 800 ophthalmological procedures projected for the ASC are currently performed in a freestanding ASC, not at TLC Lake Shore or other hospitals. It is also not consistent with the applicant's statement that the 1,000 remaining (gastroenterological) procedures projected for the ASC are currently performed at two other hospitals in addition to TLC Lake Shore and at a freestanding ASC. TLC's projection of net patient

revenue to be lost to the proposed ASC therefore cannot be assessed with precision and must be discounted. In view of this circumstance and in the absence of comments from other area hospitals, the Department finds insufficient basis for reversal or modification of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

## Attachments

BPNR Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Members of Premier Ambulatory Services Development Company, LLC.
BFA Attachment B	Pro-Forma balance sheet of Premier Ambulatory Services Development Company, LLC.



Project # 142211-B
Sympaticare, LLC d/b/a Summit Park Hospital

Program: Hospital County: Rockland
Purpose: Establishment & Construction Acknowledged: March 4, 2015

Executive Summary

Description

Sympaticare, LLC d/b/a Summit Park Hospital (Hospital), an existing Delaware limited liability company authorized to conduct business in the State of New York, is seeking approval to be established as the new operator of Summit Park Hospital-Rockland County Infirmery, a 74-bed, Article 28 acute care hospital which is housed on the fourth floor of Summit Park Nursing Care Center, a 321-bed Article 28 residential health care facility (RHCF) located at 50 Sanatorium Road, Pomona (Rockland County). The Hospital is currently certified for 57 Physical Medicine and Rehabilitation (PM&R) beds and 17 Psychiatric beds. As part of this CON request, the applicant will convert all 57 PM&R beds to Medical/Surgical (Med/Surg) beds, will decertify all 17 Psychiatric beds, and will perform needed renovations. A separate entity, Summit Park Acquisition Group, LLC, will acquire the real property located at 50 Sanatorium Road, Pomona, New York. The applicant will lease the Hospital premises from Summit Park Acquisition Group, LLC. There is a relationship between Sympaticare, LLC and Summit Park Acquisition Group, LLC in that the entities have common membership.

The Hospital is designated as a Long Term Acute Care Hospital (LTACH) by the Centers for Medicare and Medicaid Services (CMS). The applicant indicated that the recertification of the 57 PM&R beds to Med/Surg is necessary because the PM&R designation conflicts with new CMS LTACH regulations that take effect in Federal Fiscal Year (FFY) 2016. New York State does not employ LTACH certification, but licenses the facility as an Article 28 acute care hospital. In accordance with Public Health Law

(PHL) §2807-c(4)(e), the Hospital is deemed a specialty long term acute care hospital exempt from case payment reimbursement. Medicaid payments for the Hospital are determined on a per diem basis.

Currently, both the Hospital and RHCF are operated by Rockland County. The County's Health Facilities Corporation, a not-for-profit local development corporation existing under the laws of the State of New York, owns all rights, title and interest in the facility's business assets and real property.

On July 16, 2014, Rockland County Health Facilities Corporation, authorized through Resolution Numbers 192 and 663, adopted April 16, 2013, and December 30, 2013, respectively, entered into a purchase and sale agreement with Sympaticare, LLC (proposed RHCF operator), Sympaticare Health, LLC (proposed Hospital operator subsequently assigned to Sympaticare, LLC), and Summit Park Acquisition Group, LLC (proposed real property owner), for the sale and acquisition of the operating assets and real property interests in the facility, upon approval by the Public Health and Health Planning Council.

Concurrently under review, Sympaticare, LLC and Summit Park Acquisition Group, LLC are seeking to acquire the operating and real property interests, respectively, in Summit Park Nursing Care Center (CON #141223).

The proposed operator is as follows:

**Sympaticare, LLC**  
**d/b/a Summit Park Hospital**  
**d/b/a Summit Nursing Care Center**

<b><u>Member</u></b>	<b><u>Interest</u></b>
<b>Shalom Braunstein</b>	<b>35.00%</b>
<b>Barry Braunstein</b>	<b>10.00%</b>
<b>Gregory Dyra</b>	<b>0.25%</b>
<b>Sympathy Care Partners, LLC</b>	<b>15.00%</b>
Gloria Adler	66.67% (10.00%)
Dan Kreisel	33.33% (5.00%)
<b>BSDSNF, LLC</b>	<b>10.00%</b>
Jerome Kahan	30.00% (3.00%)
Benjamin Kahan	20.00% (2.00%)
Cheskel Kahan	10.00% (1.00%)
Shabsi Kahan	10.00% (1.00%)
Chaya Rosenfield	10.00% (1.00%)
Naomi Engelman	10.00% (1.00%)
Rifka Friedman	10.00% (1.00%)
<b>SNH, LLC</b>	<b>9.75%</b>
Nesanel Milstein	100.00% (9.75%)
<b>PAM Summit Park, LLC</b>	<b>5.00%</b>
Philip Pollak	100.00% (5.00%)
<b>Sympaticare New Jersey, LLC</b>	<b>5.00%</b>
Yisroel Kuperwasser	60.00% (3.00%)
Charles Kuperwasser	40.00% (2.00%)
<b>Sympaticare Lakewood, LLC</b>	<b>5.00%</b>
Saul Kuperwasser	50.00% (2.50%)
Bernard Zucker	40.00% (2.00%)
David Zucker	10.00% (0.50%)
<b>Sympaticare SZ, LLC</b>	<b>5.00%</b>
Samuel Zucker	100.00% (5.00%)

(%) = indirect interest

OPCHSM Recommendation  
 Contingent Approval

Need Summary

In order to treat a wider mix of long-term acute care patients, Sympaticare proposes to convert

Summit Park's 57 physical medicine and rehabilitation beds to medical/surgical beds. This would re-orient the LTACH to the treatment of higher acuity patients in need of more specialized care than that provided under the hospital's current PM&R bed complement.

Program Summary

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

Financial Summary

Summit Park Acquisition Group, LLC will acquire the Hospital's operating and real property assets for \$12,000,000 which will be funded as follows: \$2,400,000 from members' equity and a \$9,600,000 loan with an interest rate between 3.5% - 6.5%, for a 10-year term, amortized up to 30 years. The loan amount was determined based on financing 80% of the total purchase price and does not include closing costs estimated at 3.5%.

Total project costs of \$2,429,465 will be funded from members' equity of \$485,893 and a \$1,943,572 loan under the same terms. A letter of interest has been provided by Harborview Capital Partners, LLC. The applicant states that they expect to refinance with a HUD mortgage.

Budget

	<u>Year One</u>
Revenues:	\$14,132,800
Expenses:	<u>\$13,630,137</u>
Net Income:	\$520,663



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into the NYSE-CON system after it is mailed to the Department. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed loan commitment for the purchase of the operations and real property, acceptable to the Department of Health. (BFA)
5. Submission of an executed loan commitment for the project costs, acceptable to the Department of Health. (BFA)
6. Submission of an amended purchase and sale agreement changing the operations' ownership from Sympaticare Health, LLC to Sympaticare, LLC, with Exhibits completed, acceptable to the Department of Health. (BFA)
7. Submission of an executed Consulting and Administrative Services agreement, acceptable to the Department of Health. (BFA)
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
9. Submission of an executed Certificate of Amendment to the Application for Authority of Sympaticare, LLC, acceptable to the Department. [CSL]
10. Submission of an executed Second Amended and Restated Operating Agreement of Sympaticare, LLC, acceptable to the Department. [CSL]
11. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of PAM Summit Park LLC, acceptable to the Department. [CSL]
12. Submission of an executed amended Operating Agreement of PAM Summit Park LLC, acceptable to the Department. [CSL]
13. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
14. Submission of an executed amended Operating Agreement of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
15. Submission of an executed amended Operating Agreement of SNH, LLC, acceptable to the Department. [CSL]
16. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of BSDSNF, LLC, acceptable to the Department. [CSL]
17. Submission of an executed amended Operating Agreement of BSDSNF, LLC, acceptable to the Department. [CSL]
18. Submission of an executed amended Operating Agreement of Sympaticare New Jersey LLC, acceptable to the Department. [CSL]
19. Submission of an executed amended Operating Agreement of Sympaticare SZ, LLC, acceptable to the Department. [CSL]
20. Submission of an executed amended Operating Agreement of Sympaticare Lakewood LLC, acceptable to the Department. [CSL]
21. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympaticare SZ, LLC, acceptable to the Department. [CSL]

22. Submission of an executed complete CON application Schedule 4B Medicaid Affidavit, acceptable to the Department. [CSL]
23. Submission of a complete Purchase and Sale Agreement with all schedules and exhibits attached, acceptable to the Department. [CSL]
24. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. Construction must start on or before January 1, 2016 and construction must be completed by July 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date  
**August 6, 2015**

# Need Analysis

## Project Proposal

Sympaticare LLC is seeking approval to acquire the operating assets of Summit Park Hospital – Rockland County Infirmiry, an existing 74 bed hospital located at Sanatorium Road, Pomona, 10970, Rockland County. Upon acquisition of the Hospital, Sympaticare LLC would decertify 17 Psychiatric beds and convert 57 Physical Medicine and Rehabilitation beds to Medical/Surgical beds.

Summit Park Hospital (the Hospital) is currently a federally-designated Long-Term Acute Care Hospital (LTACH). LTACH is a Federal and not a state designation. Federally-designated LTACHs are required to have an average inpatient length of stay of 25 days or greater and have different reimbursement rules than other acute care hospitals. Summit Park Hospital had a non-psychiatric inpatient average length of stay of 29.1 days from 2009 to 2013.

In order to treat a wider mix of long-term acute care patients, Sympaticare proposes to convert Summit Park's 57 physical medicine and rehabilitation beds to medical/surgical beds. This would re-orient the LTACH to the treatment of higher acuity patients in need of more specialized care than that provided under the hospital's current PM&R bed complement.

## Background

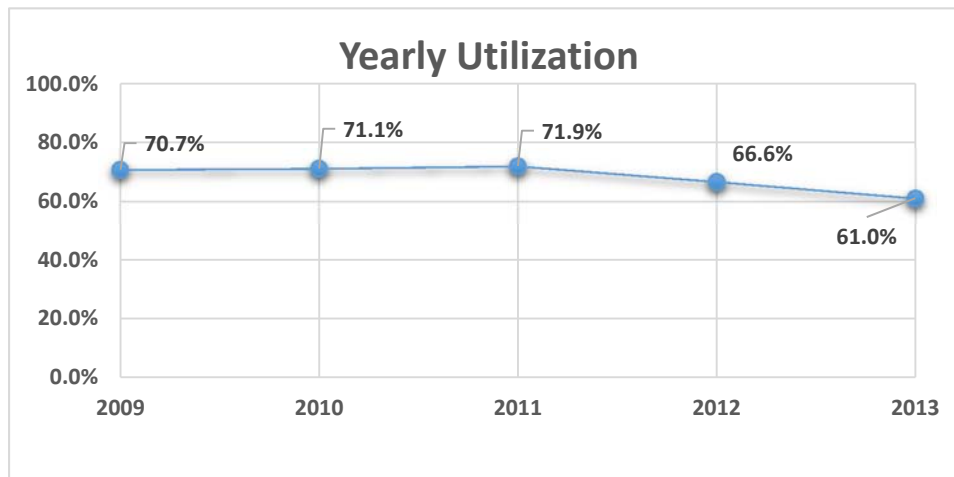
Summit Park Hospital will be certified for the following beds and services:

<b>Table 1: Summit Park Hospital</b>			
<b>Bed Category</b>	<b>Current Beds</b>	<b>Requested Action</b>	<b>Upon Completion</b>
Medical/Surgical	0	57	57
Physical Medicine and Rehabilitation	57	(57)	0
Psychiatric	17	(17)	0
<b>Total</b>	<b>74</b>	<b>(17)</b>	<b>57</b>

<b>Table 2: Summit Park Hospital</b>	
Medical Services – Primary Care	Medical Services – Other Medical Specialties
Renal Dialysis - Acute	

## Analysis

Summit Park Hospital's historical utilization is given below.



Sympaticare proposes to purchase Summit Park Hospital and continue to operate the facility as an LTACH, converting its current Physical Medicine and Rehabilitation beds to medical surgical beds. An LTACH must have an average inpatient length of stay of 25 days or more, which Summit Park Hospital has consistently exceeded. The applicant expects a conservative estimate of 10% of the target population to be transferred to their LTACH, which would result in a fully utilized facility. Currently, the Hospital sees 12% of patients who have a LOS of 25 days or more in the service area.

Facility	2012		2013		2014	
	Discharges	LOS	Discharges	LOS	Discharges	LOS
Summit Park Hospital	187	58.1	161	54.4	116	50.2
Good Samaritan Hospital of Suffern	126	37.6	88	40.6	112	36.5
Hudson Valley Hospital Center	52	34.2	48	35.0	32	48.2
Nyack Hospital	126	37.8	99	40.1	77	35.5
SJRH - St Johns Division	161	40.0	171	35.8	95	39.3
Westchester Medical Center	735	50.4	815	48.0	861	49.7

Below is the historical 80% market share of Summit Park Hospital, by zip code. This market share is expected to change with the conversion of beds from Physical Medicine and Rehabilitation to Medical/Surgical.

Zip Code	2009		2010		2011		1012		2013	
	Market Share	Dis-charges	Market Share	Dis-charges	Market Share	Dis-charges	Market Share	Dis-charges	Market Share	Dis-charges
10977	20.0%	42	23.4%	65	20.8%	43	20.5%	37	26.4%	37
10970	55.1%	56	46.4%	26	53.7%	36	48.3%	25	48.5%	19
10980	8.1%	4	33.5%	11	22.8%	11	43.6%	18	42.7%	15
10927	36.7%	19	36.4%	22	34.3%	16	24.6%	17	33.1%	14
10952	31.2%	25	15.9%	16	12.1%	14	21.3%	15	11.9%	13
10956	13.8%	14	23.8%	22	27.8%	24	19.0%	15	22.9%	13
10960	24.2%	10	22.8%	11	38.6%	14	31.0%	13	22.5%	10
10923	24.6%	11	45.8%	13	27.4%	11	31.5%	11	27.3%	8
10954	23.1%	16	25.3%	15	23.9%	12	34.9%	17	12.9%	8
10965	28.8%	14	14.6%	4	14.0%	5	46.6%	12	35.8%	8
10901	12.0%	11	41.0%	18	29.2%	13	21.0%	7	14.6%	7
10962	24.2%	9	26.8%	15	17.7%	6	3.5%	3	7.9%	2
All Other	28.2%	12	31.7%	18	34.6%	5	23.8%	14	22.2%	29

In support of this application, Summit Park Hospital provided projections of referral volume from several nearby hospitals. These are summarized below and in BPNR Attachment A, Table 5. The Department requested that these projections be provided in letters signed by the applicant and the referring hospital. Currently only St Johns Riverside Hospital, Nyack Hospital and Good Samaritan Regional Medical Center included these referral projections within their signed letters of support; Westchester Medical Center and Hudson Valley Hospital Center did not provide signed transfer projections.

BPNR Attachment A, Table 5 indicates that the Hospital can expect at least 65 referrals per month from the three hospitals that furnished transfer projections. The transfer projections in the BPNR Attachment A are based on 2012 long-term acute care eligible patients. Patients with a length of stay greater than ten days are likely to require treatment in an LTACH. This likelihood increases for patients with a length of stay greater than 16 days, and patients with a length of stay greater than 25 days are definitely eligible for LTACH care. These assumptions support the transfer estimates provided in BPNR Attachment A.

<b>Table 5: 2012 Discharges by Length of Stay for Patients Likely to Require Long-Term Acute Care</b>			
<b>Facility</b>	<b>Discharges by Length of Stay</b>		
	<b>10 – 16 Days</b>	<b>16 + Days</b>	
		<b>16 – 25 Days</b>	<b>25 + Days</b>
Good Samaritan Hospital of Suffern	725	166	126
Hudson Valley Hospital Center	553	133	52
Nyack Hospital	773	227	126
SJRH - St Johns Division	980	259	161
Summit Park Hospital	82	69	187
Westchester Medical Center	1,635	660	735

The applicant expects to participate in all three PPS's serving Rockland County, Montefiore, Westchester and Refuah.

Historical length of stay data for Summit Park Hospital non-psychiatric inpatients is provided in BPNR Attachment A, Table 1. This project is expected to have no effect on the average length of stay at the LTACH.

Upon approval of this project, all current patients in the LTACH will be discharged, 30 of whom will transition to the associated nursing home located in the same building. The hospital will start over with a census of zero and operate in compliance with new CMS regulations for LTACH.

The applicant estimates that the census of the LTACH will grow to 33 by the end of year one and 52 by the end of year three. BPNR Attachment A, Tables 3 and 4, provide calculations of discharges and patient census at both the Hospital and the associated nursing home, based on the given census estimates. The tables provide a rough picture of the overall utilization patterns at both facilities.

#### Conclusion

The new bed focus will allow the Hospital to continue to operate as an LTACH in compliance with CMS regulations and to treat a wider mix of long-term acute care patients who may need a significant amount of specialized care. There is evidence that these 57 Medical/Surgical beds will be well-utilized, based on current hospital utilization patterns and transfer estimates provided by the applicant.

The 17 Psychiatric beds which the applicant also proposes to decertify have been unoccupied since April 2014. Therefore, the decertification will have no effect on current access to Psychiatric beds by residents of the community.

#### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

#### Project Proposal

Sympaticare, LLC seeks to acquire the operating assets of the Summit Park Hospital a/k/a Rockland County Infirmary in Rockland County, decertify 17 psychiatric beds and convert 57 Physical Medicine and Rehabilitation beds to Medical/Surgical and operate the facility as a federally-designated Long Term Care Hospital (LTCH). Upon approval, the facility will be known as Summit Park Hospital.

The Applicant indicates that the goal of the LTCH is to provide access to care for patients who require hospital-level care for relatively extended periods. The LTCH will serve patients with chronic critical

illnesses who require more extended recuperation periods, continued medical management, and a specialized environment for recovery.

Once the patient becomes medically stabilized and high intensity services are no longer needed, the patient can then be transferred to a lower level of care (such as home health or skilled nursing facility (SNF)). As Sympaticare will also be operating a SNF on the same site, it will be positioned to offer an integrated post-acute care delivery system. The LTCH patients who become stable enough can be transitioned to Summit Park Nursing Care Center, if they choose.

Staffing is expected to increase by 0.3 FTEs in the first year and by 76.5 FTEs by the third year of operation.

#### Character and Competence

The members of Sympaticare, LLC are:

<b>Member Name</b>	<b>Education/Experience</b>	<b>Percentage Ownership</b>
<b>Shalom Braunstein</b> <i>Managing Member</i>	NYS Licensed Nursing Home Administrator. Managing employee of Laconia Nursing Home (Bronx). Mr. Braunstein disclosed ownership interest in Elcor NH and Cayuga Ridge Extended Care Facility.	<b>35.00%</b>
<b>Barry Braunstein</b> <i>Managing Member</i>	NYS Licensed Nursing Home Administrator. Administrator of Laconia Nursing Home (Bronx). Mr. Braunstein disclosed ownership interest in Laconia, Oxford and Cayuga Ridge Extended Care Nursing Homes.	<b>10.00%</b>
<b>Gregory Dyra</b>	MBA from Northwestern Univ. Licensed Financial Analyst. Owns Obair Capital, a financial consulting company	<b>0.25%</b>
<b>Sympathy Care Partners, LLC</b>		<b>15.00%</b>
Gloria Adler (66.67%)	Holds dual master's degrees. President & managing member of GIA Investments and Properties, a real estate development company.	
Daniel Kreisel (33.33%)	Management position at the Jewish Foundation, Inc.	
<b>BSDSNF, LLC</b>		<b>10.00%</b>
Rivka Friedman (10%)	Student and NH Volunteer	
Benjamin Kahan (20%)	Salesman for the OE Group, an energy consulting company.	
Cheskel Kahan (10%)	Director of Purchasing for Sheepshead Nursing & Rehab Center	
Jerome Kahan (30%)	Holds dual Master's degrees. NYS Licensed Nursing Home Administrator at Sheepshead Nursing & Rehab Center. Mr. Kahan disclosed ownership interest in Sheepshead Nursing & Rehab Center and Harbor Care, LLC (LHCSA)	
Shabsi Kahan (10%)	Employed by BSD Management, a Home Care facility. Discharge Planning experience for the elderly from SNFs.	
Chaya Rosenfeld (10%)	Vocational Director at the School for Children with Hidden Intelligence in Lakewood Township, NJ. Experience providing special education for mentally disabled children.	
Naomi Engelman (10%)	Transportation Coordinator at Sheepshead Nursing & Rehab Center.	
<b>SNH, LLC</b>		<b>9.75%</b>
Nesanel Milstein (100%)	B.S. in Finance. President of MFI Management, an investment management company in NJ.	

<b>PAM Summit Park, LLC</b>		<b>5.00%</b>
Philip A. Pollak (100%)	Holds degrees in Talmudic Law & Finance. Employed as a Sr. Management Analyst by Harbor Group International, a real estate investment firm.	
<b>Sympaticare New Jersey, LLC</b>		<b>5.00%</b>
Yisroel Kuperwasser (60%)	Master's degree in Talmudical Studies. Teacher at Yeshivas Novominsk, a private school in Brooklyn. Various volunteering projects, including caring for mentally disabled and companion to the elderly.	
Charles Kuperwasser (40%)	Master's degree in Talmudical Law and CEO of Charles Kuperwasser, LLC, a diamond & jewelry manufacturer.	
<b>Sympaticare Lakewood, LLC</b>		<b>5.00%</b>
Shaul Kuperwasser (50%)	Founder & CEO of Strategic Properties, a real estate business. He owns and operates apartment complexes (over 2,000 residential units) and serves on the boards of a non-profit medical services company in NJ and school in Long Island. Mr. Kuperwasser disclosed ownership interest in Columbus Hospital LTACH in New Jersey.	
Bernard Zucker (40%)	Master's degree in Talmudical Studies. Teacher at Yeshivas Novominsk. Gives lectures on Talmudic Studies & Jewish Law. Mentors teenage boys & young adults.	
David Zucker (10%)	Master's degree in Talmudical Studies. Teacher at Yeshivas Ruach Chaim, a religious educational institution located in Jerusalem, Israel.	
<b>Sympaticare SZ, LLC</b>		<b>5.00%</b>
Samuel Zucker (100%)	President of Kapok International Trading, Inc., a company that imports filling/stuffing for toys.	

In addition to having a member (Shaul Kuperwasser) who holds an ownership interest in a New Jersey LTCH, Sympaticare plans to enter into a consulting and administrative services agreement with MileStone Healthcare, Inc. to aid in the transition and ultimate operation of the LTCH. Mr. George Thompson has been identified as the General Manager of MileStone. Sympaticare has indicated Ms. Suzanne Gehrman will be hired as the interim CEO for Summit Park Hospital. In keeping with past practice, disclosure information was submitted and reviewed for both individuals.

Mr. Thompson is both a Licensed Clinical Social Worker and Licensed Nursing Home Administrator with over 20 years of healthcare experience. Since November 1994, he has been employed by MileStone Healthcare in a variety of positions to include General Manager, Director of Operations, Assistant Vice President, Executive Director and Subacute Program Director. Mr. Thompson also works (.22 FTEs) as a surveyor for the Joint Commission. In this role, he is responsible for evaluating all aspects of healthcare services delivery.

Ms. Gehrman is a Registered Nurse with over 15 years of practice and experience in clinical support and development. Since 1997 she has served as the Regional Director of Operations and Director of Clinical Support Services at MileStone Healthcare. In this role, her responsibilities have included providing consultative and management services in post-acute care facilities, providing guidance, direction and educational resources in clinical program development, and ensuring regulatory compliance for LTCH, rehab and senior behavioral health services. Prior to her employment with Milestone, Ms. Gehrman was CEO/Administrator of Plano Specialty Hospital. There, she initiated building design, program development and operational LTCH services for a start-up hospital that became the model for other programs in the Southwest region.

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 revealed the following:

*A review of operations for **Cayuga Ridge Extended Care Center** for the periods identified above reveals that the Centers for Medicare & Medicaid Services (CMS) imposed Civil Monetary Penalties (CMPs) totaling \$200,750 for the enforcement cycle starting November 18, 2014 through April 21, 2015, when substantial compliance was achieved. The CMP resulted from the declaration of immediate jeopardy on November 18, 2014.*

*The referenced NYSDOH survey of November 18, 2014 identified deficiencies under 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.35(i) Food Procure/Prepare/Serve-Sanitary, 483.75 Effective Administration/resident Well-Being, 483.75(d)(1)-(2) Governing Body-Facility Policies/Appoint Administration, and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans. Concerns rising to the level of Immediate Jeopardy related to the widespread unsanitary conditions in the food service department that potentially affected all the residents in the facility. An additional immediate risk to resident's health and safety was identified regarding the facility's failure to monitor and maintain safe surface temperatures of radiators in resident rooms.*

*On November 25, 2014, a revisit survey found that the Immediate Jeopardy was removed but the facility was still out of compliance with 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.75 Effective Administration/resident Well-Being, 483.75(d)(1)(2) Governing Body-Facility Policies/Appoint Administration, and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans.*

*On March 24, 2015 a second revisit survey determined that substantial compliance still had not been achieved and re-cited deficiencies under 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.75 Effective Administration/Resident Well-Being, 483.75(d)(1)(2) Governing Body-Facility Policies/Appoint Administration, and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans. The continued non-compliance resulted in a second declaration of Immediate Jeopardy stemming from the facility's failure to implement an effective plan of correction to monitor and maintain safe surface temperatures of radiators in resident rooms.*

*On March 27, 2015, a third revisit survey removed the Immediate Jeopardy cited the nursing home's continued non-compliance with 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.75 Effective Administration/Resident Well-Being, 483.75(d)(1)-(2) Governing Body-Facility Policies/Appoint Administration and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans.*

*On April 29, 2015, a fourth revisit survey found that the remaining deficiencies had been corrected, and substantial compliance had been achieved on April 21, 2015.*

*The New York State Department of Health is currently reviewing the findings. However, a review of the facts related to the above referenced surveys finds that the applicant members involved are in compliance with character and competence principles, consistent with PHL §2801-a(3). The analysis determined that the deficiencies were a continuation of non-compliance, and not isolated events, and that a single enforcement action would be issued.*

*A review of operations for **Oxford Nursing Home** for the periods identified above reveals the nursing home was assessed a Civil Monetary Penalty of \$66,397.50 for the period of 6/10/01 to 8/11/05. The review of*



Oxford Nursing Home results in a conclusion of substantially consistent high level of care since there were no enforcements.

Conclusion

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

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

<h2>Financial Analysis</h2>
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Real Property and Asset Purchase Agreement

The applicant has submitted a signed purchase and sale agreement to acquire the Hospital's operating interest and the real property. The terms are summarized below:

Date:	July 16, 2014
Seller:	Rockland County Health Facilities Corporation
Purchaser:	Sympaticare Health, LLC, Sympaticare, LLC, and Summit Park Acquisition Group, LLC
Assets Transferred:	Facility real property; facility business assets including furniture and equipment, inventories, computers, intellectual property, trade names, permits, personal property leases; contracts; books and records; patient and supplier data, surveys, maps and diagrams, causes of action against third parties and insurance proceeds.
Excluded Assets:	Cash and cash equivalents prior to closing date, accounts receivable for period prior closing, residents' personal property, claims to third party overpayments, inventory expended prior to closing date, information and property that does not pertain to the operations of the facility, and employee benefit plans and funds.
Assumed Liabilities:	Future payment and performance of assumed contracts.
Purchase Price:	\$12,000,000
Payment of the Purchase Price:	\$600,000 escrow deposit (allocated to Hospital) \$11,400,000 due at closing.

The purchase price for the real property and operations is proposed to be satisfied as follows:

Equity (Summit Park Acquisition Group, LLC)	\$2,400,000
Loan (10-years, 3.5% - 6.5%, amortization up to 30 years)	<u>\$9,600,000</u>
Total	\$12,000,000

A letter of interest has been provided by Harborview Capital Partners, LLC. The loan amount was determined based on financing 80% of the total purchase price and does not include closing costs estimated at 3.5%. The applicant states they expect to refinance with a HUD mortgage.

The Asset Purchase Agreement (APA) provides that ten days before closing the value of the operating assets being transferred from the realty entity to the operating entity will be determined and agreed upon. The applicant has provided a pro-forma balance sheet as of day one of operations which projects that \$2,400,000 will be allocated to the acquisition of the goodwill of the facility, \$600,000 will be allocated to the acquisition of the facility's equipment, and \$9,036,000 will be allocated to the purchase of the real property. A BFA contingency has been established for verification of the allocation of the Hospital operating assets.

The applicant has provided a Transition Agreement related to the APA whereby Rockland County Health Facilities Corporation will hold all assets associated with the operation of the Hospital and subject to State and Federal law, will transfer the assets to Sympaticare, LLC at closing.

The applicant states that litigation referenced in the APA as outstanding (CSEA v. County of Rockland et.al. Index No. 2014-323 and Northern Services Group, Inc. et.al County of Rockland et.al Index No. 2014-518) was dismissed during December of 2014.

BFA Attachment C is a summary of the net worth of the applicant members of Sympaticare, LLC and Summit Park Acquisition Group, LLC. The applicant has provided a letter of interest from Harborview Capital Partners to finance the acquisition of the operations and real property at the terms stated above. The letter of interest provides a ten-year bridge loan at the stated terms. The applicant intends to refinance the loan at the end of the term. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Signed, dated, and notarized affidavits have been received by sixteen of the applicant members stating their willingness to contribute resources disproportionate to their membership interest in the operating and realty entity to cover the equity contributions of any member who does not have adequate liquid assets to cover his or her share of the purchase price, working capital requirements, project costs, and the balloon payment (should terms acceptable to the Department be unavailable at the time of refinancing). As of July 20, 2015, affidavits remain outstanding from the following: Naomi Engelman, Dan Kreisel, Yisroel Kuperwasser, and Chaya Rosenfeld (submitted a signed affidavit, but not dated or notarized).

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 PHL with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has a small outstanding balance.

#### Assignment of Purchase and Sale Agreement

The applicant has submitted an executed Assignment of Purchase and Sale Agreement that assigns rights under the Purchase and Sale Agreement dated July 16, 2014, by and among Rockland County Health Facilities Corporation and Summit Park Acquisition Group, LLC. The terms are as follows:

Date:	November 14, 2014
Assignor:	Sympaticare Health, LLC
Assignee:	Sympaticare, LLC
Assets Transferred:	All rights, title, obligations and interest under the purchase agreement date July 16, 2014, by and among Rockland County Health Facilities Corporation, Summit Park Acquisition Group, LLC, Assignor and Assignee, pertaining to the facility Business Assets and Facility Real Property
Consideration:	\$10

#### Lease Agreement

The applicant has submitted an executed lease agreement to lease the real property. The terms are summarized below:

Date:	July 7, 2015
Premises:	All real property consisting of a 57-bed hospital located on the fourth floor of "Building A" located at 50 Sanatorium Road, Pomona, New York 10970
Owner/Landlord:	Summit Park Acquisition Group, LLC
Lessee:	Sympaticare, LLC
Term:	30 years
Rent:	\$1,500,000 per year in years 1 and 2; \$2,000,000 per year in years 3-30.
Provisions:	Triple Net

The lease agreement is a non-arm's length agreement. The applicant has indicated that Summit Park Acquisition Group, LLC and Sympaticare, LLC share the same membership.

Currently, Medicaid capital reimbursement will not be altered upon the change in ownership.

#### Consulting and Administrative Services Agreement

The applicant has submitted a draft consulting and administrative services agreement, the terms of which are summarized below:

Operator:	Sympaticare, LLC d/b/a Summit Park Hospital
Contractor:	Consultant Healthcare, LLC
Services Provided:	Assist in recruiting leadership positions (CEO/Administrator, director of nursing, case management, business office, admissions and marketing) for start-up for 1-3 year transition; assist in implementation of high acuity programs, staff education on LTCH criteria/conditions of participation, CMS reporting requirements, and state, federal, and local regulatory compliance standards; monitor CCI compliance on admissions and impact on net revenue; recommend cost efficiencies; assist in referral and census development, marketing activities, patient selection; analysis of length of stay with Case Management and Nursing leadership; monitoring billing, reimbursement, collections and reconciliation of business office activities; establish collaborative physician relations; assist with preparation of disease specific certifications, development of policies/procedures; develop DRG cost profiles for top ten DRGs; and establish and monitor benchmarks for short and extended patient days.
Term:	Initial term of 12 months, renewable for additional 12-month terms upon agreement of both Parties
Fee:	\$300,000 per annum, payable in monthly arrears (\$25,000/month)

While Consultant Healthcare, LLC will provide all of the above services, the licensed Operator retains full legal authority, responsibility, and control for the operations including control over the following:

- The hiring or termination of the LTCH's administrator;
- Independent control of the LTCH's books and records;
- Authority over the disposition of assets and the incurring of liabilities on behalf of the LTCH; and
- Authority for the independent adoption and enforcement of policies affecting the delivery of health care services.

#### Total Project Cost and Financing

Total project costs for renovations are estimated at \$2,429,465, broken down as follows:

Renovation & Demolition	\$1,709,200
Asbestos Abatement or Removal	75,000
Design Contingency	178,420
Construction Contingency	178,420
Architect/Engineering Fees	96,347
Financing Costs	100,805
Interim Interest Expense	75,000
CON Application Fee	3,000
CON Processing Fee	<u>13,273</u>
Total Project Cost	\$2,429,465

Project costs are based on a start date of January 1, 2016, with a eighteen-month construction period.

The applicant's financing plan appears as follows:

Equity - Summit Park Acquisition Group, LLC (Real Property owner)	\$485,893
Bank loan (10-years, 3.5% - 6.5%, amortization up to 30 years)	<u>1,943,572</u>
Total	\$2,429,465

A letter of interest has been provided by Harborview Capital Partners, LLC. The loan amount was determined based on financing 80% of the total project cost and does not include closing costs estimated at 3.5%. The applicant states they expect to refinance with a HUD mortgage.

The net worth summary of the applicant members reveals sufficient resources overall to meet equity requirements for the purchase of the operating assets, working capital, renovations and balloon payment (BFA Attachment C). However, liquid resources may not be available in proportion to ownership interest. As of July 20, 2015, affidavits have been provided from all except the four aforementioned members stating their willingness to contribute resources disproportionate to their membership interest in the operating and realty entities to cover the equity contributions of any member who does not have adequate liquid assets.

#### Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Year One</u>
Revenues:		
Medicaid-FFS	\$955.00	\$1,394,300
Medicare-FFS	\$1,200.00	\$11,826,000
Commercial-FFS	\$1,100.00	401,500
Private Pay	\$1,400.00	\$511,000
Total Revenue		\$14,132,800
Expenses:		
Operating	\$992.12	\$11,950,137
Capital	\$139.48	\$1,680,000
Total	\$1,131.60	\$13,630,137
Net Income		\$502,663
Utilization (Patient days)		12,045
Occupancy		57.89%

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

- The Medicaid rate is based on the Hospital's 2015 Specialty Hospital Exempt Rate authorized and developed in accordance with PHL §2807-c(4)(e-2)(iii) and Part 86-1.23(e) of 10NYCRR. As a specialty long term acute care hospital, the Medicaid rate is established as a per diem rate, currently based on the facility's 2005 operating costs with applicable trending in accordance with PHL §2807-c(10), plus capital pass-through. As long as the Hospital retains CMS LTCH designation, this per diem rate methodology will continue to be the basis for Medicaid rate establishment/reimbursement through to the full transition to Medicaid Managed Care. If the federal designation is terminated due to non-compliance with the new CMS LTCH regulations that go into effect in FFY 2016 (beginning October 1, 2015), Medicaid reimbursement would transition to the APR-DRG case-payment methodology applicable for Article 28 acute care hospitals.
- There is no distinction in the capital rate related to the facility going from public to proprietary. The hospital will get depreciation and interest.
- Medicare revenues are based on the historical experience of the facility, adjusted for projected changes in patient acuity. Medicare payments are per case and based on a long-term care diagnosis-related group (LTC-DRG) payment methodology, weighted to reflect resources required for the medically complex characteristics of LTCH patients. The applicant has presented the Medicare payments as an average per diem based on the historical LTC-DRG reimbursement experience of the Hospital's non-psychiatric inpatients.
- Commercial and Private Pay revenues are based on the current operator's historical experience.
- Expense assumptions are based on historical experience, taking into account reductions related to purchased services and staffing reductions (FTE decreases for LPNs, Aides, Physicians, PT and OT Therapists, plus related fringe/pension benefits).

- Projected utilization for the 57 Med/Surg beds is 57.89% in Year One and 87.72% by Year Three. In 2013, non-psychiatric inpatient utilization was 61%, with an average length of stay of 26.8 days.
- The breakeven utilization is projected at 55.83%.
- Utilization broken down by payor source during the first year after the change in ownership is summarized below:

<u>Payor:</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	1,460	12.12%
Medicare-FFS	9,855	81.82%
Commercial-FFS	365	3.03%
Private Pay	<u>365</u>	<u>3.03%</u>
Total	12,045	100%

The applicant has provide letters of support for patient referrals to the Hospital, including the following:

- Good Samaritan Hospital - expects to refer 15-25 patients per month;
- Nyack Hospital - expects to refer 10-15 patients per month;
- St. John's Riverside Hospital - expects to refer 10-20 patient per month; and
- Westchester Medical Center - unable to determine the number of patient referrals at this time.

#### Capability and Feasibility

Summit Park Acquisition Group, LLC will acquire the Hospitals' operating and real property assets for \$12,000,000 which will be funded as follows: \$2,400,000 from members' equity and a \$9,600,000 loan for 10-years with an interest rate between 3.5% - 6.5%, amortized up to 30 years. Total project costs of \$2,429,465 will be funded from member's equity of \$485,893 and a \$1,943,572 loan under the same terms. A letter of interest has been provided by Harborview Capital Partners, LLC. The applicant states they expect to refinance with a HUD mortgage.

The working capital requirement is estimated at \$2,271,690 based on two months of Year One expenses. The pro-forma balance sheet indicates that as of day one of operations the members will have contributed the entire amount from their personal liquid resources. The members' net worth summary, provided as BFA Attachment C, shows sufficient resources overall to meet all equity requirements for this application, but liquid resources may not be available in proportion to ownership interest. As of July 20, 2015, affidavits have been provided from all except the four aforementioned members stating their willingness to contribute resources disproportionate to their membership interest in the operating and realty entities to cover the equity contributions of any member who does not have sufficient liquid assets.

The submitted budget indicates a net profit of \$502,663 in the first year after the change in ownership. BFA Attachment D is Summit Park Hospital's pro forma balance sheet, which shows the entity will start off with \$5,071,690 in members' equity.

BFA Attachment E is the 2012-2013 certified financial statements of Summit Park Hospital / Summit Park Nursing Care Center. As shown, the combined entity had an average negative working capital position of \$62,769,832, average negative net assets of \$136,465,576, and an average negative income of \$28,682,360 for the period. The following is noted with respect to the combined certified financial statements:

- The 2013 loss from operations increased by \$2 million over 2012. Total operating revenues declined more than total operating expenses (by 16.8% and 9.3%, respectively).
- Net patient service revenue decreased 17.6% or \$12.2 million – comprised of \$9.7 million from a decrease in census and service units, \$2 million related to a decrease in intergovernmental transfer (IGT) payments, and a \$663,000 increase in bad debt expense.
- The hospital and the nursing home rely on advances from the County to help meet their obligations on a timely basis. In 2013 the County transferred \$13.3 million (no advances were transferred in 2012). As of 2013, the facilities owe the County \$70.7 million.
- Reflected in the combined entity financials, in 2013 and 2012 the hospital received \$4.0 million and \$3.7 million, respectively, from the indigent care pool, which is intended to partially offset the cost of services provided to the uninsured.

- Included in other receivables at the end of 2013 and 2012 were approximately \$15.3 million and \$18.9 million, respectively, of IGT payments that were authorized by the State of New York Department of Health.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

<h2>Attachments</h2>
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<p>BPNR Attachment A HSP Attachment A BFA Attachment A BFA Attachment B BFA Attachment C  BFA Attachment D BFA Attachment E</p>	<p>Need Analysis Quality Measures and Inspection Report Organizational Chart - Sympaticare, LLC d/b/a Summit Park Hospital Organizational Chart - Summit Park Acquisition Group, LLC Net Worth - Sympaticare, LLC d/b/a Summit Park Hospital, Sympaticare, LLC d/b/a Summit Park Nursing and Care Center, and Summit Park Acquisition Group, LLC Pro Forma Balance Sheet- Sympaticare, LLC d/b/a Summit Park Hospital 2012-2013 Financial Summary of Summit Park Hospital/Summit Park Nursing Care Center</p>
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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 6<sup>th</sup> day of August, 2015 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 be established as the new operator of Summit Park Hospital-Rockland County Infirmary, a 74-bed, Article 28 acute care hospital which is housed on the fourth floor of Summit Park Nursing Care Center, a 321-bed Article 28 residential health care facility (RHCF) located at 50 Sanatorium Road, Pomona (Rockland County), and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142211 B

Sympaticare, LLC d/b/a Summit Park Hospital

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into the NYSE-CON system after it is mailed to the Department. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed loan commitment for the purchase of the operations and real property, acceptable to the Department of Health. (BFA)
5. Submission of an executed loan commitment for the project costs, acceptable to the Department of Health. (BFA)
6. Submission of an amended purchase and sale agreement changing the operations' ownership from Sympaticare Health, LLC to Sympaticare, LLC, with Exhibits completed, acceptable to the Department of Health. (BFA)
7. Submission of an executed Consulting and Administrative Services agreement, acceptable to the Department of Health. (BFA)
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
9. Submission of an executed Certificate of Amendment to the Application for Authority of Sympaticare, LLC, acceptable to the Department. [CSL]
10. Submission of an executed Second Amended and Restated Operating Agreement of Sympaticare, LLC, acceptable to the Department. [CSL]
11. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of PAM Summit Park LLC, acceptable to the Department. [CSL]
12. Submission of an executed amended Operating Agreement of PAM Summit Park LLC, acceptable to the Department. [CSL]
13. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
14. Submission of an executed amended Operating Agreement of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
15. Submission of an executed amended Operating Agreement of SNH, LLC, acceptable to the Department. [CSL]
16. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of BSDSNF, LLC, acceptable to the Department. [CSL]
17. Submission of an executed amended Operating Agreement of BSDSNF, LLC, acceptable to the Department. [CSL]
18. Submission of an executed amended Operating Agreement of Sympaticare New Jersey LLC, acceptable to the Department. [CSL]
19. Submission of an executed amended Operating Agreement of Sympaticare SZ, LLC, acceptable to the Department. [CSL]



20. Submission of an executed amended Operating Agreement of Sympaticare Lakewood LLC, acceptable to the Department. [CSL]
21. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympaticare SZ, LLC, acceptable to the Department. [CSL]
22. Submission of an executed complete CON application Schedule 4B Medicaid Affidavit, acceptable to the Department. [CSL]
23. Submission of a complete Purchase and Sale Agreement with all schedules and exhibits attached, acceptable to the Department. [CSL]
24. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. Construction must start on or before January 1, 2016 and construction must be completed by July 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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 # 141223-B**  
**Sympaticare, LLC d/b/a Summit Park Nursing Care Center**

**Program:** Residential Health Care Facility      **County:** Rockland  
**Purpose:** Establishment & Construction      **Acknowledged:** May 22, 2014

**Executive Summary**

**Description**

Sympaticare, LLC, d/b/a Summit Park Nursing Care Center, a Delaware limited liability company authorized to conduct business in the State of New York, requests approval to be established as the new operator of Summit Park Nursing Care Center, a 321-bed, public county, Article 28 residential health care facility (RHCF) located at 50 Sanatorium Road, Pomona (Rockland County). The facility is also licensed for a 66-slot Adult Day Health Care Program (ADHCP). As part of this request, the applicant will decertify 41 RHCF beds and perform renovations. A separate entity, Summit Park Acquisition Group, LLC, will acquire the real property which also houses a 74-bed Article 28 hospital, Summit Park Hospital-Rockland County Infirmiry, which is the subject of a companion CON.

The RHCF is currently operated by Rockland County. The County's Health Facilities Corporation, a not-for-profit local development corporation existing under the laws of the State of New York, owns all rights, title and interest in the facility's business assets and real property.

On July 16, 2014, Rockland County Health Facilities Corporation, authorized through Resolution Numbers 192 and 663, adopted April 16, 2013, and December 30, 2013, respectively, entered into a purchase and sale agreement with Sympaticare, LLC (proposed RHCF operator), Sympaticare Health, LLC (proposed hospital operator subsequently assigned to Sympaticare, LLC), and Summit Park Acquisition Group, LLC (proposed real property owner), for the sale and acquisition of the operating assets and real property interests in

the facility. The applicant will lease the premises from Summit Park Acquisition Group, LLC.

The proposed operator is as follows:

**Sympaticare, LLC**  
**d/b/a Summit Park Nursing Care Center**

<b><u>Member</u></b>	<b><u>Interest</u></b>
<b>Shalom Braunstein</b>	<b>35.00%</b>
<b>Barry Braunstein</b>	<b>10.00%</b>
<b>Gregory Dyra</b>	<b>0.25%</b>
<b>Sympathy Care Partners, LLC</b>	<b>15.00%</b>
Gloria Adler	66.67% (10.00%)
Dan Kreisel	33.33% (5.00%)
<b>BSDSNF, LLC</b>	<b>10.00%</b>
Jerome Kahan	30.00% (3.00%)
Benjamin Kahan	20.00% (2.00%)
Cheskel Kahan	10.00% (1.00%)
Shabsi Kahan	10.00% (1.00%)
Chaya Rosenfield	10.00% (1.00%)
Naomi Engelman	10.00% (1.00%)
Rifka Friedman	10.00% (1.00%)
<b>SNH, LLC</b>	<b>9.75%</b>
Nesanel Milstein	100.00% (9.75%)
<b>PAM Summit Park, LLC</b>	<b>5.00%</b>
Philip Pollak	100.00% (5.00%)
<b>Sympaticare New Jersey, LLC</b>	<b>5.00%</b>
Yisroel Kuperwasser	60.00% (3.00%)
Charles Kuperwasser	40.00% (2.00%)
<b>Sympaticare Lakewood, LLC</b>	<b>5.00%</b>
Saul Kuperwasser	50.00% (2.50%)
Bernard Zucker	40.00% (2.00%)
David Zucker	10.00% (0.50%)
<b>Sympaticare SZ, LLC</b>	<b>5.00%</b>
Samuel Zucker	100.00% (5.00%)

(%) = indirect interest

The applicant will lease the RHCF premises from Summit Park Acquisition Group, LLC. There is a relationship between Sympaticare, LLC and Summit Park Acquisition Group, LLC in that the entities have common membership. There will be no change in services provided subsequent to the change in operator.

Concurrently under review, the applicant is seeking to be established as the new operator of Summit Park Hospital-Rockland County Infirmary, also located at 50 Sanatorium Rd, Pomona (CON #142211).

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

Summit Park Nursing Care Center's occupancy was 80.6% in 2011, 75.6% in 2012, and 66.3% in 2013. Current utilization as of July 22, 2015 is 63.2% with 118 vacant beds. Upon the change of ownership, Summit Park Nursing Care Center will decertify 41 RHCF beds, for a total of 280 beds.

#### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3). The design of the nursing home updates a traditional nursing home layout to broad code conformance.

#### Financial Summary

Summit Park Acquisition Group, LLC will acquire the RHCF operational assets and the real property for \$20,934,594 which will be funded as follows: \$4,186,931 from members' equity and a \$16,747,663 loan with an interest rate between 3.5% - 6.5% for a 10-year term, amortized up to 30 years. The loan amount was determined based on financing 80% of the total purchase price and does not include closing cost estimated at 3.5%.

Total project costs of \$34,520,233 for the renovations is estimated to be funded as follows: \$6,420,763 from members' equity (which was reduced from 25% to 18.6% based on the 41-bed decertification) and a \$28,099,470 loan with an interest rate between 3.5% - 6.5% for a 10-year term, amortized up to 30 years. A letter of interest has been provided by Harborview Capital Partners, LLC. The applicant states that they intend to refinance with a HUD mortgage.

<u>Budget</u>	<u>Year One</u>
Revenues:	\$29,974,960
Expenses:	<u>28,251,839</u>
Net Income:	\$1,723,121

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into the NYSE-CON system after it is mailed to the Department. [PMU]
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)
3. 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)
4. Submission of letters of intent, not merely letters of support, from all facilities and lead Performing Provider System agencies willing to refer patients to the residential health care facility. These letters should include, but not be limited to, the estimated number of patient referrals to the residential health care facility. (RNR)
5. Submission of a commitment, signed by the applicant, to serve difficult-to-place individuals and the percentage of the facility's total resident population that will consist of difficult-to-place individuals, including but not limited to short-term restorative patients who require seven days per week physical therapy and/or occupational therapy services. (RNR)
6. Submission of a commitment, signed by the applicant, to serve the uninsured and the percentage of the facility's total resident population that will consist of uninsured individuals, including. Uninsured individuals have been identified by the applicant to be those who have no means of financial support and require charity care. (RNR)
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Description of how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Documentation that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identification of the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.

- d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
- e. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two-year period. (RNR)

8. Submission of an affidavit from each owner of Sympaticare, LLC acknowledging his/her responsibility for the health, safety and welfare of the residents of the nursing home, and the necessity of providing sufficient resources for its successful operation. [LTC]
9. Submission of and programmatic approval of a transition plan that will outline proactive measures to be undertaken to ensure that the quality of care at the facility is maintained and will not be undermined by the implementation of the new business plan. [LTC]
10. Submission and programmatic approval of final plans for the entire building which demonstrate full code compliance and which adhere to the originally approved project scope. [LTC]
11. Submission of an executed loan commitment for the purchase of the operations and real property, acceptable to the Department of Health. (BFA)
12. Submission of an executed loan commitment for the project costs, acceptable to the Department of Health. (BFA)
13. Submission of an amended purchase and sale agreement changing the operations' ownership from Sympaticare Health, LLC to Sympaticare, LLC, with Exhibits completed, acceptable to the Department of Health. (BFA)
14. Submission of a complete Purchase and Sale Agreement with all schedules and exhibits attached, acceptable to the Department. [CSL]
15. Submission of an executed complete CON application Schedule 4B - Medicaid Affidavit, acceptable to the Department. [CSL]
16. Submission of an executed amended Operating Agreement of Sympaticare SZ, LLC, acceptable to the Department. [CSL]
17. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympaticare SZ, LLC, acceptable to the Department. [CSL]
18. Submission of an executed amended Operating Agreement of Sympaticare Lakewood LLC, acceptable to the Department. [CSL]
19. Submission of an executed amended Operating Agreement of Sympaticare New Jersey LLC, acceptable to the Department. [CSL]
20. Submission of an executed amended Operating Agreement of BSDSNF, LLC, acceptable to the Department. [CSL]
21. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of BSDSNF, LLC, acceptable to the Department. [CSL]
22. Submission of an executed amended Operating Agreement of SNH, LLC, acceptable to the Department. [CSL]
23. Submission of an executed amended Operating Agreement of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
24. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
25. Submission of an executed amended Operating Agreement of PAM Summit Park LLC, acceptable to the Department. [CSL]
26. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of PAM Summit Park LLC, acceptable to the Department. [CSL]
27. Submission of an executed Certificate of Assumed Name of Sympaticare, LLC, indicating its intent to do business as Summit Park Nursing Care Center, acceptable to the Department. [CSL]
28. Submission of an executed Second Amended and Restated Operating Agreement of Sympaticare, LLC, acceptable to the Department. [CSL]
29. Submission of an executed Certificate of Amendment to the Application for Authority of Sympaticare, LLC, acceptable to the Department. [CSL]
30. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Any outstanding deficiencies cited in the December 14, 2014 Summit Park survey will be addressed as part of the new business structure for the facility, and the applicant will demonstrate continued compliance with the approved plan of correction. [LTC]
3. The applicant will refrain from the operation of a scatter bed ventilator dependent service and will not admit any patient requiring ventilator support to the nursing home. [LTC]
4. Submission of and approval of the patient safety plan by the Metropolitan Area Regional Office New Rochelle, prior to the commencement of construction. [LTC]
5. The leasing of any space adjacent or contiguous to any nursing home area will receive prior programmatic endorsement. [LTC]
6. The applicant will obtain prior programmatic approval before entering into any subsequent consulting and service agreement for the nursing home. [LTC]
7. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
8. Construction must start on or before January 1, 2016 and construction must be completed by July 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**August 6, 2015**

# Need Analysis

## Project Description

Sympaticare, LLC seeks approval to become the established operator of Summit Park Nursing Care Center, a 321-bed Article 28 residential health care facility (RHCF), located at 50 Sanitorium Road, Pomona, 13326, in Rockland County. The current operator of the RHCF is Rockland County. Upon approval of this application, the facility will reduce its total bed capacity by 41 RHCF beds, resulting in a total of 280 beds, as shown below:

Summit Park Nursing Care Center	Current	Proposed Action	Upon Completion
RHCF Beds	321	(41)	280
<b>Total</b>	<b>321</b>	<b>(41)</b>	<b>280</b>

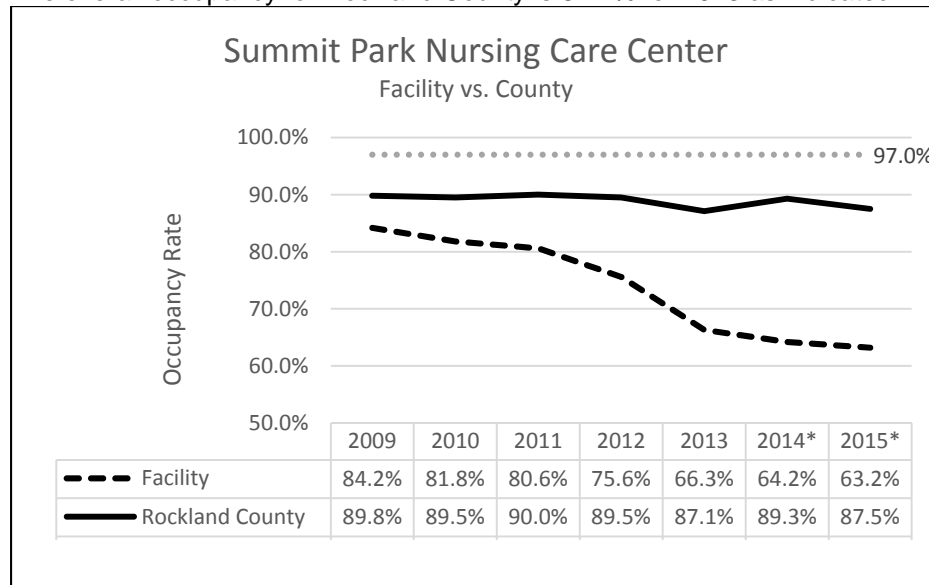
## Analysis

There is currently a surplus of one bed in Rockland County as indicated in the following table:

### RHCF Need – Rockland County

<b>2016 Projected Need</b>	1,635
<b>Current Beds</b>	1,676
<b>Beds Under Construction</b>	-40
<b>Total Resources</b>	1,636
<b>Unmet Need</b>	-1

The overall occupancy for Rockland County is 87.1% for 2013 as indicated in the following chart:



\*unaudited; based off weekly census

Summit Park Nursing Care Center's occupancy was 80.6% in 2011, 75.6% in 2012, and 66.3% in 2013. Current utilization as of July 22, 2015 is 63.2% with 118 vacant beds. According to the applicant, Summit Park Nursing Care has had low occupancy due to the following reasons:

- The facility has been in operational limbo over the past few years as the public became aware of the potential privatization, sale, or closure of the facility;
- Referral sources and families have been reluctant to send patients to a facility whose future is unknown;

- Media scrutiny of the facility's financial losses has discouraged placements by the public who may assume that such losses predict poorer care;
- Due to budgetary constraints, Rockland County has not been the "best in class" operator in the service area and has not been able to afford to invest significant dollars in renovating the property, improving services, and transforming for future healthcare opportunities;
- The current admissions process favors placement of patients into Summit Park Hospital and there is no system in place to process referrals into the nursing home; and
- Rockland County never had an effective marketing and branding campaign.

In addition to the 41-bed reduction, the applicant intends to increase occupancy in the following ways:

- Separate the admissions and marketing departments between the nursing home and the hospital and initiate an active marketing campaign;
- Process admissions seven days a week and work with all area hospitals to process admissions in a timely fashion, avoid unnecessary hospital readmissions and meet the area hospitals' discharge needs;
- Identify difficult-to-place individuals, which are patients requiring short-term rehabilitation on a 7-day a week basis, patients with a history of developmental and/or physical disabilities, patients who exhibit psychiatric behaviors, and uninsured patients;
- Partner with all three PPSs in the area – Montefiore, Westchester, and Refuah;
- Contract with managed long-term care plans to strengthen existing relationships with the facility and enroll with other networks as appropriate;
- Transfer 30 patients from Summit Park Hospital to the nursing home as soon as possible based on patient acuity level and adequate training of the nursing home staff; and
- Admit 30% of the discharged patient population from Summit Park Hospital to the nursing home.

Studies show that 25% of long term acute care hospital (LTACH) patients are discharged to residential health care facilities. In effort to calculate patient projections at the Nursing Home, an analysis included in BPNR Attachment A was performed assuming a discharge rate of 27.5% LTACH patients per month, which is the average of the 25% discharge rate from the evidence base and the 30% provided by the proposed operator. As seen in Table 4 of BPNR Attachment A, this analysis demonstrates achievement of occupancy to the Department's planning optimum by Year 3.

#### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Summit Park Nursing Care Center's Medicaid admissions for 2012 and 2013 was 67.2% and 59.2%, respectively. This facility exceeded Rockland County 75% rates in 2012 and 2013 of 24.4% and 26.5%, respectively.



#### Conclusion

Although occupancy at the RHCF has been low in recent years, this is largely attributable to the uncertainties surrounding the facility's possible closure or eventual transfer to other sponsorship. The Department expects that the proposed 13 percent reduction in bed capacity and the measures proposed by the new operators to increase utilization will restore the facility's occupancy to more optimum levels. Approval of this application will also help preserve access to RHCF care for the Medicaid population and other residents of Rockland County.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Summit Park Nursing Care Center	Same
Address	Sanatorium Road Pomona, NY 10970	Same
RHCF Capacity	321	280
ADHC Program Capacity	66	Same
Type of Operator	County	Proprietary
Class of Operator	Public	Limited Liability Company
Operator	County of Rockland	Sympaticare, LLC  <b>Individual Members</b> *Shalom Braunstein 35.00% *Barry Braunstein 10.00% Gregory Dyra 0.25%  <b>2<sup>nd</sup> level LLC members</b> <u>Sympathy Care Partners LLC 15.00%</u> Gloria Adler 66.66% Dan Kreisel 33.33%  <u>BSDSNF, LLC 10.00%</u> Jerome Kahan 30% Benjamin Kahan 20% Cheskel Kahan 10% Shabsi Kahan 10% Chaya Rosenfeld 10% Naomi Engelman 10% Rivka Friedman 10%  <u>SNH, LLC 9.75%</u> Nesanel Milstein 100%  <u>PAM Summit Park LLC 5.00%</u> Philip Pollak 100%  <u>Sympaticare New Jersey LLC 5.00%</u> Yisroel Kuperwasser 60% Charles Kuperwasser 40%  <u>Sympaticare Lakewood LLC 5.00%</u> Saul Kuperwasser 50% Bernard Zucker 40% David Zucker 10%  <u>Sympaticare SZ, LLC 5.00%</u> Samuel Zucker 100%  *Managing Member (%) indirect interest

## Character and Competence - Background

### Facilities Reviewed

#### Nursing Homes

Elcor Nursing Home	06/2011 to present
Cayuga Ridge Extended Care Facility	12/2012 to present
Sheepshead Nursing and Rehabilitation Center	07/2014 to present
Laconia Nursing Home	07/2005 to present
Oxford Nursing Home	07/2005 to present

#### Licensed Home Care Services Agency

Harbor Care, LLC	08/2009 to present
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#### New Jersey Long Term Acute Care Hospital

Columbus Hospital LTACH	03/2012 to present
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### Individual Background Review

Shalom Braunstein is a New York State licensed nursing home administrator and is considered to be in good standing. He is currently employed at Laconia Nursing Home as a managing employee. Mr. Braunstein discloses the following ownership interests:

Elcor Nursing and Rehabilitation Center	06/2011 to present
Cayuga Ridge Extended Care Facility	12/2012 to present

Barry Braunstein is a New York State licensed nursing home administrator and is considered to be in good standing. He is currently employed at Laconia Nursing Home as an administrator. Mr. Braunstein discloses the following ownership interests:

Laconia Nursing Home	12/1992 to present
Oxford Nursing Home	12/1992 to present
Cayuga Ridge Extended Care Facility	12/2012 to present

Gregory Dyra is a chartered financial analyst and is considered to be in good standing. He lists his employment as a consultant at Obair Capital, LLC located in Nashville, Tennessee. Mr. Dyra discloses no ownership interest in health facilities.

Gloria Adler is the president and managing member of GIA Investments and Properties, LLC, a real estate development company located in Monsey, New York. Ms. Adler discloses no ownership interest in health facilities.

Dan Kreisel lists his employment as a manager at the Jewish Foundation, Inc., an outreach company located in Monsey, New York. Mr. Kreisel discloses no ownership interest in health facilities.

Jerome Kahan is a New York State licensed nursing home administrator and is considered to be in good standing. He is currently employed as the nursing home administrator of record at Sheepshead Nursing and Rehabilitation Center. Mr. Kahan discloses the following ownership interests:

Sheepshead Nursing and Rehabilitation Center	07/2014 to present
Harbor Care, LLC	08/2009 to present

Benjamin Kahan is a salesman for The OE Group, an energy consultation company located in Brooklyn, New York. Mr. Kahan discloses no ownership interest in health facilities.

Cheskel Kahan is the Director of Purchasing at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, New York. Mr. Kahan discloses no ownership interest in health facilities.

Shabsi Kahan is a manager at BSD Management, a home care management company located in Monsey, New York. Mr. Kahan discloses no ownership interest in health facilities.

Chaya Rosenfeld is the Vocational Director for the School for Children with Hidden Intelligence, a special education school located in Lakewood Township, New Jersey. Ms. Rosenfeld discloses no ownership interest in health facilities.

Naomi Engelman is the Transportation Coordinator at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, New York. Ms. Engelman discloses no ownership interest in health facilities.

Rivka Friedman is a student at the Excelsior College Testing and Training International (TTI) program. Ms. Friedman discloses no employment history and discloses no ownership interest in health facilities.

Nesanel Milstein is the President of MFI Management, Inc., an investment management company located in Hillside, New Jersey. Mr. Milstein discloses no ownership interest in health facilities.

Phillip Pollak is a Senior Asset Management Analyst with Harbor Group International, a real estate investment firm located in New York, New York. Mr. Pollak discloses no ownership interest in health facilities.

Yisroel Kuperwasser is a teacher at Yeshivas Novominsk, a school located in Brooklyn, New York. Previously he was a teacher at The Cheder, a school located in Brooklyn, New York. Mr. Kuperwasser discloses no ownership interest in health facilities.

Charles Kuperwasser is the Chief Executive Officer of Charles Kuperwasser LLC, a diamond and jewelry manufacturer located in New York, New York. Mr. Kuperwasser discloses no ownership interest in health facilities.

Saul Kuperwasser is the Chief Executive Officer of Strategic Properties of North America, a real estate investment company located in Lakewood, New Jersey. Mr. Kuperwasser discloses the following ownership interest:

Columbus Hospital LTACH (NJ)	03/2012 to present
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Bernard Zucker is a teacher/mentor at Yeshivas Novominsk, a school located in Brooklyn, New York. Mr. Zucker discloses no ownership interest in health facilities.

David Zucker is a teacher at Yeshivas Ruach Chaim, a religious educational institution located in Jerusalem, Israel. Mr. Zucker discloses no ownership interest in health facilities.

Samuel Zucker is the President at Kapok International Trading Inc., a toy accessory company located in Brooklyn, New York. Mr. Zucker discloses no ownership interest in health facilities.

#### Character and Competence – Analysis

No negative information has been received concerning the character and competence of the applicants.

*A review of operations for **Cayuga Ridge Extended Care Center** for the periods identified above reveals that the Centers for Medicare & Medicaid Services (CMS) imposed Civil Monetary Penalties (CMPs) totaling \$200,750 for the enforcement cycle starting November 18, 2014 through April 21, 2015, when substantial compliance was achieved. The CMP resulted from the declaration of immediate jeopardy on November 18, 2014.*

*The referenced NYSDOH survey of November 18, 2014 identified deficiencies under 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.35(i) Food Procure/Prepare/Serve-Sanitary, 483.75 Effective Administration/resident Well-Being, 483.75(d)(1)-(2) Governing Body-Facility Policies/Appoint Administration, and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans. Concerns rising to the level of Immediate Jeopardy related to the widespread unsanitary conditions in the food service department that potentially affected all the residents in the facility. An additional immediate risk to resident's health and safety was identified regarding the facility's failure to monitor and maintain safe surface temperatures of radiators in resident rooms.*

On November 25, 2014, a revisit survey found that the Immediate Jeopardy was removed but the facility was still out of compliance with 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.75 Effective Administration/resident Well-Being, 483.75(d)(1)(2) Governing Body-Facility Policies/Appoint Administration, and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans.

On March 24, 2015 a second revisit survey determined that substantial compliance still had not been achieved and re-cited deficiencies under 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.75 Effective Administration/Resident Well-Being, 483.75(d)(1)(2) Governing Body-Facility Policies/Appoint Administration, and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans. The continued non-compliance resulted in a second declaration of Immediate Jeopardy stemming from the facility's failure to implement an effective plan of correction to monitor and maintain safe surface temperatures of radiators in resident rooms.

On March 27, 2015, a third revisit survey removed the Immediate Jeopardy cited the nursing home's continued non-compliance with 10 NYCRR 483.25(h) Free of Accident Hazards/Supervision/Devices, 483.75 Effective Administration/resident Well-Being, 483.75(d)(1)-(2) Governing Body-Facility Policies/Appoint Administration and 483.75(o)(1) QAA Committee-members/Meet Quarterly/Plans.

On April 29, 2015, a fourth revisit survey found that the remaining deficiencies had been corrected, and substantial compliance had been achieved on April 21, 2015.

The New York State Department of Health is currently reviewing the findings. However, a review of the facts related to the above referenced surveys finds that the applicant members involved are in compliance with character and competence principles, consistent with PHL §2801-a(3). The analysis determined that the deficiencies were a continuation of non-compliance, and not isolated events, and that a single enforcement action would be issued.

A review of operations for **Oxford Nursing Home** for the periods identified above reveals the nursing home was assessed a Civil Monetary Penalty of \$66,397.50 for the period of 6/10/01 to 8/11/05. The review of Oxford Nursing Home results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for **Elcor Nursing and Rehabilitation Center, Laconia Nursing Home and Sheepshead Nursing and Rehabilitation Center** for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for **Harbor Care, LLC** for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for **Columbus Hospital LTACH** for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Program Review

This application proposes to establish Sympaticare, LLC as the operator of Summit Park Nursing Care Center (Summit Park) and undertake construction to correct code deficiencies and update building systems. Sympaticare, LLC is an existing limited liability company with an abstruse and non-transparent organizational structure which includes individual members and second level limited liability companies. The proposed ownership structure has Shalom Braunstein (35%), Barry Braunstein (10%) and Gregory Dyra (0.25%) as individual members, and the following LLC's as second level members: Sympathy Care Partners, LLC (15%), BSDSNF, LLC (10%), SNH, LLC (9.75%), PAM Summit Park LLC (5%), Sympaticare New Jersey LLC (5%), Sympaticare Lakewood LLC (5%), and Sympaticare SZ, LLC (5%). Individual members of each of these LLC's is noted above. The referenced LLC's are not known to be the operator of record of any health facility, or the owner of any health care related companies. A contingency ensuring the accountability of each individual owner will be required.

Shalom and Barry Braunstein are on the current ownership structure for Cayuga Ridge Extended Care Center. Cayuga Ridge Extended Care Center had been operating on a 5 year limited life operating certificate which expired on November 14, 2014. The Department has been working with representatives of Cayuga Ridge to file a Certificate of Need application to establish a permanent operating group and address the physical plant concerns emanating from a lack of maintenance and upkeep by the previous owners. A 90-day notice of ownership interest transfer was approved in February, 2012 adding Shalom Braunstein and Barry Braunstein in an effort to stabilize the nursing home.

As history illustrates, the transition of a county-owned nursing home to private auspices presents unique operational challenges during the transition period immediately following the change of ownership. This application presents an additional challenge by proposing a new business plan for operating the facility. In order to forestall any quality shortcomings the applicant must identify potential dangers and install a management team with the experience to maintain the care and welfare of the residents. A transition plan will be required for review which guarantees the maintenance of health and safety for the residents during the extended fill-up process and implementation of the new business plan.

No administrative services or consulting agreements are proposed in this application.

#### Physical Environment

Summit Park will occupy 172,005 square feet of space in a building currently housing a 321-bed nursing home, a 74-bed hospital, and Rockland County offices. The most recent design submission locates the nursing home on floors 2-3 and 5-10. The fourth floor will house a 57-bed long term acute care hospital (LTACH) and floors 5-10 will constitute the skilled nursing units. Entrance will be made into the existing lobby on the first floor. The LTACH and nursing home administrator offices will be located adjacent to the lobby located on the existing first floor, and its future use has not been disclosed. The 66 slot adult day health care program will be relocated from the third floor into an FGI compliant area adjacent to the entrance. The bulk of the remaining space on the first floor will be leased for purposes which have not been disclosed. The second floor will continue to house the kitchen, and central storage. The remaining areas on this floor will also be leased to an undisclosed outside party. Currently some industrial and service functions are located on the third floor, including the barber and beauty salon. The applicant proposes to construct a large rehabilitation therapy area in the current ADHCP space with the remaining functions to be located on the floor undetermined at this time. The applicant will be required to obtain prior approval for all spaces to be leased out, with all nursing home functions addressed in the final plan submission.

In addition the applicant has indicated it will bring the building up to code to eliminate all waivers, and address issues resulting from lack of maintenance to the building by the current owner. The major item to be addressed will be the installation of a new HVAC system with separate ducted air filtration to replace the inefficient and obsolete PTAC in-wall units.

The nursing units to be located on floors 5-9 will be identical 48-bed units with 11 doubles and 26 singles. The units will be divided into two neighborhoods of 31 and 17 beds respectively. Dining rooms will be located on the west end of the larger south neighborhood, and on the north side of the north neighborhood. The north dining room includes a private dining space accessible from the adjacent main dining and lounge area, however access through is not made from a corridor, which is not allowed under CMS regulations. A large activity room abuts the northern dining room, and an interior lounge adjacent to the elevator lobby serves the south neighborhood. Central bathing areas are located in the center core and include tub rooms and stretcher showers. Nursing stations are located on the eastern and western sides of the core area and clean and soiled utility rooms are available for each neighborhood. Resident bedrooms are arrayed around the perimeter of the floor, in a variety of sizes and configurations. The majority of these rooms will be ADA compliant, however 7 doubles in the south neighborhood will utilize outboard toilet rooms which are not wheelchair accessible. Five of the resident rooms will include bathrooms with showers of minimum 4 foot by 5 foot dimension. Each floor will also include two oxygen storage rooms. It is unclear the necessity for these rooms on a non-ventilator dependent floor.

The existing tenth floor houses storage and machine rooms, and the future location of these functions will be required on the final plan submission. The floor will undergo a gut renovation to create a fully ADA compliant unit consisting of 20 doubles and 8 singles. The design of the new unit generally mirrors the other nursing units, however the problematic outboard toilet rooms on the lower floors are eliminated. By moving the toilet rooms to the interior corridor wall full wheelchair accessibility is achieved, and the bedroom gains a more open and homelike setting. The design also enables a toe to toe bed arrangement for all the double bedrooms. Four of the singles will include showers.

#### Project Review - Analysis

The renovation of Summit Park will provide a much needed updating of the building, addressing the outdated and inefficient HVAC system. The design of the building will require significant outlays in order to create an FGI and ADA compliant nursing home. The submitted plans are incomplete, and areas on the first and second floors will be used for non-RHCF purposes. The third floor will be largely untouched, outside of the new rehab area, with the remaining uses of the floor undetermined. The nursing floors reflect the traditional nursing home design concepts, but will meet all current codes.

It is noted that the programmatic review has been restricted to residential space. Other areas of the building may require renovation in order to achieve full code compliance.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3). The design of the nursing home updates a traditional nursing home layout to broad code conformance. The applicant should consider adopting the ADA compliant tenth floor design for all nursing units. Additional refinement will be required to attain full compliance with FGI guidelines and CMS requirements.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Real Property and Asset Purchase Agreement

The applicant has submitted a signed purchase and sale agreement to acquire the real property and operating interests of the RHCF. The terms of the agreement are summarized below:

Date:	July 16, 2014
Seller:	Rockland County Health Facilities Corporation
Purchaser:	Summit Park Acquisition Group, LLC; Sympaticare, LLC; and Sympaticare Health, LLC
Assets Transferred:	Facility real property; facility business assets including furniture and equipment, inventories, computers, intellectual property, trade names, permits, personal property leases; contracts; books and records; patient and supplier data; surveys, maps and diagrams; causes of action against third parties and insurance proceeds.
Excluded Assets:	Cash and cash equivalents prior to closing date, accounts receivable for period prior closing, residents' personal property, claims to third party overpayments, inventory expended prior to closing date, information and property that does not pertain to the operations of the facility, and employee benefit plans and funds.
Assumed Liabilities:	Future payment and performance of assumed contracts.
Purchase Price:	\$20,934,5794
Payment of the Purchase Price:	\$600,000 deposit at signing (allocated to RHCF); \$1,200,000 additional deposit upon settlement or dismissal of outstanding litigation; \$19,134,594 due at Closing

The applicant has provided an executed Supplemental Agreement dated July 15, 2015, which provides that the Seller and Purchaser have agreed to reduce the Purchase Price from \$24,000,000 to \$20,934,594 based on the decertification of 41 RHCF beds (a reduction of \$74,766 per bed with an aggregate maximum price reduction of \$3,065,406).

The purchase price for the real property and operations is proposed to be satisfied as follows:

Equity (Summit Park Acquisition, LLC)	\$4,186,931
Loan (10 years, 3.5% - 6.5%, 30-year amortization)	<u>16,747,663</u>
Total	<u>\$20,934,594</u>

A letter of interest has been provided by Harborview Capital Partners, LLC. The loan amount was determined based on financing 80% of the total purchase price and does not include closing costs estimated at 3.5%. The applicant states they expect to refinance with a HUD mortgage.

The Asset Purchase Agreement (APA) provides that ten days before closing the value of the RHCF operating assets will be determined and agreed upon. The applicant has provided a pro forma balance sheet which projects that \$3,900,000 will be allocated to the acquisition of the goodwill of the facility, \$1,200,000 will be allocated to the acquisition of the facility's equipment, and \$15,963,600 will be allocated to the purchase of the real property. A BFA contingency has been established for verification of the allocation of the RHCF operating assets.

In accordance with the APA, the Seller will transfer the operational assets of the hospital to a separate entity, Sympaticare Health, LLC. The Department advised the applicant that ownership of both operations must be through one entity. On November 14, 2014, an assignment agreement was executed between Sympaticare Health, LLC and Sympaticare, LLC that assigned Sympaticare Health, LLC's rights to the operational assets of the hospital to Sympaticare, LLC. The purchase price for the operations of the hospital is \$12,000,000 and combined with the above, the Purchase Price totals \$32,934,594.



The applicant has provided a Transition Agreement related to the APA whereby Rockland County Health Facilities Corporation will hold all assets associated with the operation of the RHCF and subject to State and Federal law, will transfer the assets to Sympaticare, LLC at closing.

The applicant states that the litigation referenced in the APA as outstanding (CSEA v. County of Rockland et.al. Index No. 2014-323 and Northern Services Group, Inc. et.al County of Rockland et.al. Index No. 2014-518) was dismissed in December of 2014.

BFA Attachment D presents a summary of the net worth of the applicant members of Sympaticare, LLC and Summit Park Acquisition Group, LLC. The applicant has provided a letter of interest from Harborview Capital Partners to finance the acquisition of the operations and real property at the terms stated above. The letter of interest provides a ten-year bridge loan at the terms stated above. The applicant intends to refinance the loan at the end of the term. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Signed, dated, and notarized affidavits have been received by sixteen of the applicant members stating their willingness to contribute resources disproportionate to their membership interest in the operating and realty entity to cover the equity contributions of any member who does not have adequate liquid assets to cover his or her share of the purchase price, working capital requirements, project costs, and the balloon payment (should terms acceptable to the Department be unavailable at the time of refinancing). As of July 20, 2015, affidavits remain outstanding from the following: Naomi Engelman, Dan Kreisel, Yisroel Kuperwasser, and Chaya Rosenfeld (submitted a signed affidavit, but not dated or notarized).

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. Currently, there are no Medicaid liabilities or assessments due.

#### Lease Agreement

The applicant has submitted an execute lease agreement, the terms of which are summarized below:

Date:	July 7, 2015
Premises:	The 3 <sup>rd</sup> , 5 <sup>th</sup> , 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> and 9 <sup>th</sup> floors of "Building A", located at 50 Sanatorium Rd, Pomona, New York 10970.
Owner/Landlord:	Summit Park Acquisition Group, LLC,
Lessee:	Sympaticare, LLC
Term:	30 years
Rent:	\$3,000,000 (\$250,000 per month) in years 1 and 2; \$3,500,000 per annum (\$291,666.66 per month) in Years 3-30.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant states that Summit Park Acquisition Group, LLC and Sympaticare, LLC share the same membership.

## Total Project Cost and Financing

Total project costs for renovations are estimated at \$34,520,233, broken down as follows:

Renovation & Demolition	\$24,613,710
Asbestos Abatement or Removal	565,000
Design Contingency	2,517,871
Construction Contingency	2,517,871
Architect/Engineering Fees	1,198,653
Financing Costs	1,415,322
Interim Interest Expense	1,500,000
CON Application Fee	3,000
CON Processing Fee	<u>188,806</u>
Total Project Cost	\$34,520,233

Project costs are based on a start date of January 1, 2016, with an eighteen-month construction period.

The applicant's financing plan appears as follows:

Equity - Summit Park Acquisition Group, LLC (Real Property owner)*	\$6,420,763
Bank loan (10-years, 3.5% - 6.5%, amortization up to 30 years)	<u>28,099,470</u>
Total	\$34,520,233

\* Members' equity was reduced from 25% to 18.6% based on a 41-bed decertification.

A letter of interest has been provided by Harborview Capital Partners, LLC. The loan amount may decrease with a corresponding increase in equity, depending on the property value. The applicant states they expect to refinance with a HUD mortgage

The net worth summary of the applicant members reveals sufficient resources overall to meet equity requirements for the purchase of the operating assets, working capital, renovations and balloon payment (BFA Attachment D). However, liquid resources may not be available in proportion to ownership interest. As of July 20, 2015, affidavits have been provided from all except the four aforementioned members stating their willingness to contribute resources disproportionate to their membership interest in the operating and realty entities to cover the equity contributions of any member who does not have adequate liquid assets.

## Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year subsequent to change of ownership, summarized as follows:

	<u>Per-Diem</u>	<u>Year One</u>
Revenues:		
Commercial Fee-for-Service	\$275.00	\$950,675
Medicare Fee-for-Service	\$530.00	\$3,331,580
Medicaid Fee-for-Service	\$293.90	\$21,558,084
Private Pay	\$373.80	\$2,487,639
Blue Cross/Blue Shield	\$325.00	<u>\$17,550</u>
Subtotal		\$28,345,528
Revenues for ADHCP	\$159.00	<u>\$1,629,432</u>
Total Revenues		\$29,974,960
Expenses:		
Operating	\$281.19	\$25,251,839
Capital	<u>\$33.41</u>	\$3,000,000
Total	\$314.60	\$28,251,839
Net Income		\$1,723,121

Utilization (Patient Days)	89,804
Occupancy	87.87%

The following is noted with respect to the submitted budget:

- The expenses and revenues related to the on-site ADHCP are included in the projected budget and are based on the current operator's historical experience providing this outpatient service.
- ADHCP utilization is projected at 10,248 visits annually, based on the historical experience of the current operator.
- The Medicaid nursing home (NH) rate is based on the facility's 2015 Medicaid Regional Pricing Rate assuming a Case Mix Index (CMI) of 0.90 for the first six months and a CMI of 0.95 for that last six months of Year One.
- The projected Medicare NH rate utilizes a 0.9907 Facility Case Mix Adjustment in Year One and a \$7.47 increase in the capital rate.
- The applicant indicates they will increase utilization based on the current census and acuity level of the patients in the affiliated hospital. They anticipate that approximately thirty of the hospital's patients can immediately be transferred to the nursing home.
- The applicant states that they will be able to maintain the RHCF's occupancy projections going forward, as hospital patients stabilize and step down to lower acuity care available in the RHCF setting. The applicant projects that there will be a net gain of one patient per week, based in part on such transfers.
- Breakeven RHCF utilization is projected at 82.8%
- Utilization broken down by payor source during the first year after the change in ownership is summarized below:

<u>Payor:</u>	<u>Visits</u>	<u>%</u>
Commercial-FFS	3,457	3.85%
Medicare-FFS	6,286	7.00%
Medicaid-FFS	73,352	81.68%
Private Pay	6,655	7.41%
Blue Cross/Blue Shield	54	.06%
Total	89,804	100.00%

#### Capability and Feasibility

The purchase price of \$20,934,594 for the operations and real property will be met with members' equity of \$4,186,931 and a bank loan of \$16,747,663 at the terms stated above. Total project costs for the renovations of \$34,520,233 are to be funded via \$6,420,763 from members' equity (which was reduced from 25% to 18.6% based on a decertification of 41 beds) and a \$28,099,470 loan at the terms stated above. Harborview Capital Partners has provided a letter of interest to cover project costs and costs related to the purchase of the operations and real property. The applicant states that they intend to refinance with a HUD mortgage.

The working capital requirement is estimated at \$4,708,640 based on two months of year one expenses. The applicant states that they will utilize members' equity to cover working capital. The pro-forma balance sheet indicates that as of day one of operations the members will have contributed the entire amount from their personal liquid resources. The members' net worth summary provided as BFA Attachment D shows sufficient resources overall to meet all equity requirements for this application, but liquid resources may not be available in proportion to ownership interest. As of July 20, 2015, affidavits have been provided from all except the four aforementioned members stating their willingness to contribute resources disproportionate to their membership interest in the operating and realty entities to cover the equity contributions of any member who does not have sufficient liquid assets.

BFA Attachment E is Sympaticare, LLC's pro forma balance sheet as of the first day of operation, which indicates members' equity of \$9,408,640. Assets include \$3,900,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total members' equity would become \$5,508,640.

The applicant has submitted a detailed business plan to increase RHCF occupancy and case mix. Major objectives include: immediately transferring patients from the affiliated hospital who can be served in a lower acuity setting; initiating a marketing program; collaborating with area hospitals and the Westchester Medical Center PPS to initiate and encourage patient transfers to the nursing home; and developing special programs for difficult to serve and/or hard to place patients.

A transition of NH residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period. Rockland County has transitioned to Medicaid Managed Care for new enrollees.

BFA Attachment F is the 2012-2013 certified financial statements of Summit Park Hospital / Summit Park Nursing Care Center. As shown, the combined entity had an average negative working capital position of \$62,769,832, average negative net assets of \$136,465,576, and an average negative income of \$28,682,360 for the period. The following is noted with respect to the combined certified financial statements:

- The 2013 loss from operations increased by \$2 million over 2012. Total operating revenues declined more than total operating expenses (16.8% and 9.3%, respectively).
- Net patient service revenue decreased 17.6% or \$12.2 million – comprised of \$9.7 million from a decrease in census and service units, \$2 million related to a decrease in intergovernmental transfer (IGT) payments, and a \$663,000 increase in bad debt expense.
- The hospital and the nursing home rely on advances from the County to help meet their obligations on a timely basis. In 2013 the County transferred \$13.3 million (no advances were transferred in 2012). As of 2013, the facilities owe the County \$70.7 million.
- Reflected in the combined entity financials, in 2013 and 2012 the hospital received \$4.0 million and \$3.7 million, respectively, from the indigent care pool, which is intended to partially offset the cost of services provided to the uninsured.
- Included in other receivables at the end of 2013 and 2012 were approximately \$15.3 million and \$18.9 million, respectively, of IGT payments that were authorized by the State of New York Department of Health.

BFA Attachment C is a financial summary of the proposed members' affiliated nursing homes, which shows that the facilities have maintained a positive net asset position, positive working capital position, and positive income from operations for the periods shown, with the exception of Cayuga Ridge Extended Care. Cayuga Ridge had a negative net asset position and negative working capital position for the period; however, 2014 shows improvement from the prior two years. Shalom Braunstein and Barry Braunstein acquired ownership interest in the facility in December 2012 and December 2014, respectively. For 2013 and 2014, the facility has demonstrated positive income from operations, showing marked improvement over the 2012 loss. BFA does not see any issues with the negative working capital position.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BPNR Attachment A	Need Analysis
BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Organizational Chart - Sympaticare, LLC d/b/a Summit Park Hospital
BFA Attachment B	Organizational Chart - Summit Park Acquisition Group, LLC
BFA Attachment C	Financial Summary - Members' Affiliated Nursing Homes
BFA Attachment D	Net Worth Summary - Sympaticare, LLC and Summit Park Acquisition Group,
BFA Attachment E	Pro Forma Balance Sheet - Sympaticare, LLC d/b/a Summit Park Nursing Care Center
BFA Attachment F	2012-2013 Financial Summary of Summit Park Hospital/Summit Park Nursing Care Center Financial Summary - Summit Park Nursing Care Center

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 6<sup>th</sup> day of August, 2015 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 be established as the new operator of Summit Park Nursing Care Center, a 321-bed, public county, Article 28 residential health care facility (RHCF) located at 50 Sanatorium Road, Pomona (Rockland County) , 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:  
141223 E

FACILITY/APPLICANT:  
Sympaticare, LLC  
d/b/a Summit Park Nursing Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into the NYSE-CON system after it is mailed to the Department. [PMU]
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)
3. 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)
4. Submission of letters of intent, not merely letters of support, from all facilities and lead Performing Provider System agencies willing to refer patients to the residential health care facility. These letters should include, but not be limited to, the estimated number of patient referrals to the residential health care facility. (RNR)
5. Submission of a commitment, signed by the applicant, to serve difficult-to-place individuals and the percentage of the facility's total resident population that will consist of difficult-to-place individuals, including but not limited to short-term restorative patients who require seven days per week physical therapy and/or occupational therapy services. (RNR)
6. Submission of a commitment, signed by the applicant, to serve the uninsured and the percentage of the facility's total resident population that will consist of uninsured individuals, including. Uninsured individuals have been identified by the applicant to be those who have no means of financial support and require charity care. (RNR)
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Description of how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Documentation that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;

- c. Identification of the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
- d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
- e. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two-year period.

(RNR)

- 8. Submission of an affidavit from each owner of Sympaticare, LLC acknowledging his/her responsibility for the health, safety and welfare of the residents of the nursing home, and the necessity of providing sufficient resources for its successful operation. [LTC]
- 9. Submission of and programmatic approval of a transition plan that will outline proactive measures to be undertaken to ensure that the quality of care at the facility is maintained and will not be undermined by the implementation of the new business plan. [LTC]
- 10. Submission and programmatic approval of final plans for the entire building which demonstrate full code compliance and which adhere to the originally approved project scope. [LTC]
- 11. Submission of an executed loan commitment for the purchase of the operations and real property, acceptable to the Department of Health. (BFA)
- 12. Submission of an executed loan commitment for the project costs, acceptable to the Department of Health. (BFA)
- 13. Submission of an amended purchase and sale agreement changing the operations' ownership from Sympaticare Health, LLC to Sympaticare, LLC, with Exhibits completed, acceptable to the Department of Health. (BFA)
- 14. Submission of a complete Purchase and Sale Agreement with all schedules and exhibits attached, acceptable to the Department. [CSL]
- 15. Submission of an executed complete CON application Schedule 4B - Medicaid Affidavit, acceptable to the Department. [CSL]
- 16. Submission of an executed amended Operating Agreement of Sympaticare SZ, LLC, acceptable to the Department. [CSL]
- 17. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympaticare SZ, LLC, acceptable to the Department. [CSL]
- 18. Submission of an executed amended Operating Agreement of Sympaticare Lakewood LLC, acceptable to the Department. [CSL]
- 19. Submission of an executed amended Operating Agreement of Sympaticare New Jersey LLC, acceptable to the Department. [CSL]
- 20. Submission of an executed amended Operating Agreement of BSDSNF, LLC, acceptable to the Department. [CSL]
- 21. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of BSDSNF, LLC, acceptable to the Department. [CSL]
- 22. Submission of an executed amended Operating Agreement of SNH, LLC, acceptable to the Department. [CSL]
- 23. Submission of an executed amended Operating Agreement of Sympathy Care Partners LLC, acceptable to the Department. [CSL]



24. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of Sympathy Care Partners LLC, acceptable to the Department. [CSL]
25. Submission of an executed amended Operating Agreement of PAM Summit Park LLC, acceptable to the Department. [CSL]
26. Submission of a signed and dated Certificate of Amendment of the Articles of Organization of PAM Summit Park LLC, acceptable to the Department. [CSL]
27. Submission of an executed Certificate of Assumed Name of Sympaticare, LLC, indicating its intent to do business as Summit Park Nursing Care Center, acceptable to the Department. [CSL]
28. Submission of an executed Second Amended and Restated Operating Agreement of Sympaticare, LLC, acceptable to the Department. [CSL]
29. Submission of an executed Certificate of Amendment to the Application for Authority of Sympaticare, LLC, acceptable to the Department. [CSL]
30. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Any outstanding deficiencies cited in the December 14, 2014 Summit Park survey will be addressed as part of the new business structure for the facility, and the applicant will demonstrate continued compliance with the approved plan of correction. [LTC]
3. The applicant will refrain from the operation of a scatter bed ventilator dependent service and will not admit any patient requiring ventilator support to the nursing home. [LTC]
4. Submission of and approval of the patient safety plan by the Metropolitan Area Regional Office New Rochelle, prior to the commencement of construction. [LTC]
5. The leasing of any space adjacent or contiguous to any nursing home area will receive prior programmatic endorsement. [LTC]
6. The applicant will obtain prior programmatic approval before entering into any subsequent consulting and service agreement for the nursing home. [LTC]
7. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
8. Construction must start on or before January 1, 2016 and construction must be completed by July 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel *JED*

**DATE:** July 30, 2015

**SUBJECT:** Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc. ("the corporation")

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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc. This not-for profit corporation seeks approval to change its name to "Capital Region Geriatric Center, Inc." The Public Health Council established the corporation in 1987 as the operator of Eddy Village Green, a residential health care facility in Albany County. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated July 9, 2013 from Karen E. Sosler, attorney for the corporation. As explained in that letter, the name change is intended to correct inconsistent uses of the name in State and Federal filings.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form

Attachment



**Iseman Cunningham  
Riester & Hyde LLP**  
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July 9, 2015

*VIA FEDERAL EXPRESS*

Ms. Barbara Del Cogliano  
Director  
Bureau of Project Management  
NYS Department of Health  
Room 1842  
Corning Tower, Empire State Plaza,  
Albany, New York 12237

**Re: Approval of Name Change  
The Capital Region Geriatric Center, Inc.**

Dear Barbara:

We represent The Capital Region Geriatric Center, Inc. ("Geriatric Center"), which is licensed as a nursing home under Article 28 of the New York Public Health Law. In accordance with 10 NYCRR §401.3(b), we seek the Department of Health's approval to remove the "The" from the Geriatric Center's name. Such change is needed to clean up inconsistent uses of the name in various State and Federal filings. We enclose for the Department's approval a Certificate of Amendment of the Certificate of Incorporation, which makes this change. Also enclosed is the Geriatric Center's current Restated Certificate of Incorporation.

If you have any questions, please give me a call at (518) 462-3000. Thanks for your help with this matter.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Karen E. Sosler

Enc.

cc: Michael Stone, Esq. *(via email)*  
Robert Swidler, Esq. *(via email)*

**Certificate of Amendment  
of the  
Certificate of Incorporation  
of  
THE CAPITAL REGION GERIATRIC CENTER, INC.**


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

The undersigned, being the Secretary of THE CAPITAL REGION GERIATRIC CENTER, INC. (the "Corporation"), does hereby certify:

1. The name of the Corporation is THE CAPITAL REGION GERIATRIC CENTER, INC.
2. The Corporation's Certificate of Incorporation was filed by the Department of State on December 30, 1987, under the New York State Not-for-Profit Corporation Law (the "NPCL").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and a charitable corporation under Section 201 of the NPCL.
4. The Certificate of Incorporation is amended to effect the following changes:
  - a. REPLACE in its entirety Article First with the following new paragraph, both of which address the name of the Corporation:

"FIRST: The name of the corporation is CAPITAL REGION GERIATRIC CENTER, INC. (the "Corporation")."
5. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is: Capital Region Geriatric Center, Inc., Attn: Executive Director, 421 West Columbia Street, Cohoes, New York 12047.
6. This Certificate of Amendment of the Certificate of Incorporation was authorized by the member in accordance with Section 802(a) of the NPCL.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of the Certificate of Incorporation on this 28 day of May, 2015.



Robert N. Swidler, Esq.  
Secretary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of August, 2015, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Capital Regional Geriatric Center, Inc., dated May 28, 2015.