

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

**COMMITTEE DAY**

**AGENDA**

*March 31, 2016*  
*10:00 a.m.*

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

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

Thomas Holt, Committee Member

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

**Acute Care Services – Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	161022 C	St. Josephs Hospital Health Center (Onondaga County)
2.	161031 C	Samaritan Medical Center (Jefferson County)
3.	161037 C	Southampton Hospital (Suffolk County)

**Cardiac Services – Construction**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	152231 C	Niagara Falls Memorial Medical Center (Niagara County)
2.	152232 C	Mercy Hospital of Buffalo (Niagara County)
3.	152234 C	Erie Medical Center (Niagara County)
4.	152245 C	Buffalo General Medical Center (Erie County)

**Transitional Care Units - Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	161059 T	Olean General Hospital (Cattaraugus County)

- 2. 161061 T Helen Hayes Hospital  
(Rockland County)
- 3. 161068 T Good Samaritan Hospital Medical Center  
(Suffolk County)
- 4. 161069 T Nyack Hospital  
(Rockland County)

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

**Ambulatory Surgery Centers - Establish/Construct Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 152356 E	Advanced Surgery Center (Rockland County)
2. 152289 E	Digestive Disease Center of Central New York, LLC (Onondaga County)
3. 161009 B	Star Surgical Suites (Nassau County)

**Diagnostic and Treatment Centers - Establish/Construct Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 161001 B	Northern Medical Center, Inc. (Orange County)

**Dialysis Services - Establish/Construct Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 152263 B	USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis (Erie County)
2. 152313 B	Queens Boulevard Extended Care Dialysis Center (Queens County)

**Residential Health Care Facilities - Establish/Construct Exhibit # 7**

<u>Number</u>	<u>Applicant/Facility</u>
1. 142145 E	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation (Suffolk County)

2. 151054 E River Valley Operating Associates, LLC  
d/b/a The Grand Rehabilitation and Nursing at River Valley  
(Dutchess County)
3. 151090 E Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at  
Guilderland  
(Albany County)
4. 151260 E North Manor Operations Associates LLC  
d/b/a Nanuet Center for Rehabilitation and Nursing  
(Rockland County)
5. 152295 E North River Operations Associates LLC  
d/b/a Haverstraw Center for Rehabilitation and Nursing  
(Rockland County)
6. 152296 E North Met Operations Associates LLC  
d/b/a Monsey Center for Rehabilitation and Nursing  
(Rockland County)
7. 161109 E Abraham Operations Associates LLC  
d/b/a Allerton Center for Rehabilitation and Nursing  
(Bronx County)
8. 161110 E Schnur Operations Associates LLC  
d/b/a Tibbits Center for Rehabilitation and Nursing  
(Westchester County)
9. 152227 E Pine Haven Operating, LLC d/b/a Pine Haven Home  
(Columbia County)
- 10.. 152265 E Highland Care Center  
(Queens County)
11. 152380 E Genesee Center Operating, LLC d/b/a Genesee Center for Nursing and  
Rehabilitation  
(Genesee County)
12. 152381 E Silver Lake Specialized Rehabilitation and Care Center  
(Richmond County)

**C. Home Health Agency Licensures**

**Home Health Agency Licensures**

**Exhibit # 8**

**Changes of Ownership**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
2412 L	Sarene Services, Inc. d/b/a Sarene Home Nursing Agency (Nassau and Suffolk Counties)
151322 E	Concepts of Health Care, Inc. (Albany, Saratoga, Washington, Fulton, Schenectady, Columbia, Montgomery, Schoharie, Greene, Rensselaer and Warren Counties)
152082 E	Marks Homecare Agency Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)
152162 E	Interim Healthcare of Syracuse, Inc. (Onondaga, Jefferson, Oswego, Cayuga, Madison, Tompkins, Cortland and Oneida Counties)
152168 E	Interim Healthcare of Binghamton, Inc. (Broome, Cortland, Chemung, Tioga, Chenango and Tompkins Counties)

**D. Certificates**

**Exhibit # 9**

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

**Applicant**

1. New York Hospital Queens Foundation, Inc.
2. The Foundation of Hudson Valley Hospital Center, Inc.
3. North Shore-Long Island Jewish Health System Laboratories

**Certificate of Dissolution**

**Applicant**

1. McAuley Living Services, Inc.



**Project # 161022-C  
St. Joseph's Hospital Health Center**

**Program: Hospital  
Purpose: Construction**

**County: Onondaga  
Acknowledged: January 14, 2016**

**Executive Summary**

**Description**

St. Joseph's Hospital Health Center, a 431-bed, not-for-profit, acute care hospital located at 301 Prospect Avenue in Syracuse (Onondaga County), requests approval for the certification of 20 additional Intensive Care Unit (ICU) beds, and for the renovation of requisite space to accommodate the beds. The 20-bed unit for this project is already in operation under temporary emergency approval in the former ICU suite located on the third floor of the main hospital building.

On January 15, 2015, St. Joseph's received temporary emergency approval from the Department of Health to operate an additional 14 medical/surgical beds and six ICU beds (the Unit) for a six-month period. The Unit became operational on May 15, 2015 and has been operating with approved temporary waivers. The hospital will be requesting an extension to its temporary emergency approval to operate the Unit for an additional period of time while this CON application is under review and physical plant changes are made to address the temporary waivers. The hospital has been using the 14 medical/surgical beds as a Progressive Care Unit (PCU) to bridge the gap between ICU and medical/surgical unit care. PCU patients typically require higher intensity nursing care than general medical/surgical unit patients; therefore, the hospital is requesting certification

of all 20 beds as ICU beds in order to give St. Joseph's the most flexibility to provide critical care services on an as needed basis. St. Joseph's is currently certified for 28 intensive care beds and will be certified for 48 as a result of this project.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Medical/Surgical occupancy remains high and ICU data has shown a constant increase from 2010 to 2014. The permanent certification of additional ICU beds is justified by the strong utilization.

**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 \$614,778 will be met via equity from the hospital. The projected budget is as follows:

Revenues	\$7,675,028
Expenses	<u>3,420,557</u>
Net Income	\$4,254,571

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [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. Construction must start on or before August 1, 2016 and construction must be completed by October 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

# Need Analysis

## Background/Analysis

St. Joseph's Hospital Health Center, a 431-bed not for profit located at 301 Prospect Avenue, Syracuse (Onondaga County), 13203 seeks approval for the certification of 20 net new Intensive Care Unit (ICU) beds at the Hospital, and for the renovation of requisite space to accommodate the beds. The 20-bed unit that is the subject of this application is already in operation on the 3rd floor of the main Hospital building under a temporary emergency approval.

The emergency approval was granted for 14 medical surgical beds and six ICU beds. The facility has been using the 14 medical surgical beds as a "progressive care unit", which is a unit designed to bridge the gap between intensive care and medical/surgical beds. The hospital, however, is requesting certification of all 20 as ICU beds to provide the most flexibility. Approval of this request will increase permanently certified ICU beds from the current 28 to 48 total, and total beds from 431 to 451.

As seen in the following table, medical surgical utilization remains very high for this facility.

	Beds	Discharges				Occupancy			
		2011	2012	2013	2014	2011	2012	2013	2014
<b>Medical/Surgical (includes ICU &amp; CCU)</b>	345	20,411	22,756	22,371	20,958	85.9%	93.5%	94.0%	89.9%
<b>Pediatric</b>	16	23	28	20	19	1.8%	2.2%	1.3%	1.2%
<b>Obstetric</b>	26	2,159	2,122	2,117	1,960	60.5%	60.9%	59.5%	52.7%
<b>General Psychiatric</b>	30	842	1,212	1,045	786	101.2%	101.1%	94.8%	79.1%
<b>Chemical Dependence</b>	0	92	160	156	108	0.0%	0.0%	0.0%	0.0%
<b>High-Risk Neonates</b>	14	198	247	210	164	63.4%	66.9%	51.4%	37.3%
<b>Total</b>	431	23,725	26,525	25,919	23,995	81.8%	88.3%	87.7%	82.3%

Source: SPARCS, Feb 2016

Per the table below, ICU discharges continue to rise and represent an increasing percentage of medical/surgical cases. When considering ICU utilization, viewing the Average Daily Census against the current number of ICU beds (28) and ICU occupancy rates from 2011-2014 indicates rates far in excess of optimal rates. It is clear the emergency approved ICU beds are being utilized and will be needed going forward.

Year	ICU Discharges	ICU as a % of all Med/Surg Discharges	Average Daily Census	ICU Occupancy Rates (28 beds)
2011	2,580	12.64%	30	107%
2012	2,980	13.32%	35.3	126%
2013	3,154	14.10%	37.5	134%
2014	3,170	15.13%	35.1	125%

## Conclusion

The continued rise in ICU discharges and medical/surgical utilization shows the need for the permanent certification of these 20 ICU beds.

## Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

St. Joseph's Hospital Health Center, an existing Article 28 acute care hospital located at 301 Prospect Avenue in Syracuse (Onondaga County), seeks approval for the certification of 20 net new Intensive Care Unit (ICU) beds and for the renovation of requisite space to accommodate the beds.

The 20-bed unit is already in operation on the 3<sup>rd</sup> floor of the main Hospital building under a temporary emergency approval. On January 15, 2015, St. Joseph's received temporary emergency approval to operate 14 medical/surgical (M/S) beds and six ICU beds for a six-month period. The Hospital has been using the M/S beds as a Progressive Care Unit (PCU), a type of unit that bridges the gap between intensive care units and medical/surgical units. In order to offer the most flexibility in providing critical care services on the 20-bed unit, the Hospital is requesting that all 20 beds be certified as ICU beds.

Prior to operating the 20-bed unit under temporary emergency approval, surgical inpatients were experiencing significant delays in being transferred to critical care beds and, as a result, were forced to remain in the Post-Anesthesia Care Unit (PACU) until a bed became available. Emergency Department (ED) patients also experienced long ED boarding times prior to being admitted. Additionally, St. Joseph's has developed strong working relationships with regional hospitals that no longer provide higher-level acute care services as well as being a receiving referral center for cardiac surgery and vascular patients. Both of these circumstances has led to the need to accommodate a growing number of critical care patients from counties outside of Onondaga County.

### 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, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for renovations and architect/engineering fees, is estimated at \$614,778, further broken as follows:

Renovation and Demolition	\$441,623
Design Contingency	44,162
Construction Contingency	44,162
Architect/Engineering Fees	48,579
Other Fees (Consultant)	30,900
CON Fee	2,000
Additional Processing Fee	<u>3,352</u>
Total Project Cost	\$614,778

Project costs are based on a construction start date of August 1, 2016, and a two-month construction period. The hospital will provide equity to meet the total project cost.



## Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, during the first and third years, summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Medicaid Fee For Service	\$2,870	\$2,118,246	\$2,877	\$2,974,558
Medicaid Managed Care	\$2,392	1,026,330	\$2,443	1,441,229
Medicare Fee For Service	\$2,025	135,697	\$2,027	190,553
Medicare Managed Care	\$1,828	367,339	\$1,749	515,838
Commercial Fee For Service	\$4,315	1,738,785	\$4,232	2,441,698
Private Pay/Charity Care	\$45	1,221	\$84	1,715
Other	\$2,886	<u>77,932</u>	\$2,736	<u>109,437</u>
Total Revenues		\$5,465,550		\$7,675,028
 <u>Expenses</u>				
Operating		\$2,469,279		\$3,389,818
Capital		<u>30,739</u>		<u>30,739</u>
Total Expenses		\$2,500,018		\$3,420,557
 Excess of Revenues over Expenses				
		\$2,965,532		\$4,254,571
 Utilization (Discharges)				
		1,892		2,657
Cost Per Discharge		\$1,321.36		\$1,287.38

Expense and utilization assumptions are based on the historical experience of the hospital operating the 20 beds on the temporary emergency approval basis.

Utilization by payor source related to the submitted operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee For Service	39.00%	38.92%
Medicaid Managed Care	22.67%	22.21%
Medicare Fee For Service	3.54%	3.54%
Medicare Managed Care	10.63%	11.10%
Commercial Fee For Service	21.30%	21.72%
Private Pay/Charity Care	1.43%	1.01%
Other	1.43%	1.50%

## Capability and Feasibility

Project costs of \$614,778 will be met via equity from operations from St. Joseph's Hospital Health Center. BFA Attachment A is the 2013 and 2014 certified financial statements of St. Joseph's Hospital Health Center and Subsidiaries, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$2,965,532 and \$4,254,571 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for intensive care services. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity incurred average operating losses of \$9,190,069 from 2013 through 2014. The applicant indicated that the reason for the 2014 loss was the result of the following: a decrease in revenues mostly due to self-pay patients who qualified for charity care, an increase in salaries and fringe benefits expenses, and increased depreciation and interest expenses. The applicant is implementing the following steps to improve operations: continuing to improve its facilities through reinvestment; expanding the managed care environment and the hospital's communication structure through the use of a comprehensive EMR system; improving quality and outcomes through partnerships with its medical staff; developing regional and national partnerships to

enhance access to best practices and overhead reductions; and the hospital has signed an agreement to become part of the Trinity Health Group Purchasing Organization (GPO) Health Trust.

Attachment B is the internal financial statements of St. Joseph's Hospital Health Center and Subsidiaries as of August 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position through August 31, 2015. Also, the consolidated entity incurred operating losses of \$22,183,681 through August 31, 2015, of which the hospital incurred losses of \$5,452,691 through August 31, 2015.

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

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 St. Joseph's Hospital Health Center
BFA Attachment B	Financial Summary - August 31, 2015 internal financial statements of St. Joseph's Hospital Health Center.



**Project # 161031-C  
Samaritan Medical Center**

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

**County:** Jefferson  
**Acknowledged:** January 27, 2016

**Executive Summary**

**Description**

Samaritan Medical Center (SMC), a 290-bed, voluntary not-for-profit, Article 28 hospital located at 830 Washington Street, Watertown (Jefferson County), requests approval to convert seven pediatric beds to five maternity and two psychiatric beds in conjunction with expansions and improvements to their maternity, pediatrics and mental health units and associated support spaces. The hospital's total licensed bed capacity will remain 290 beds.

SMC is a regional hospital provider serving Jefferson and surrounding counties. The additions and renovations will address needed upgrades to existing services and infrastructure to maintain a code-compliant, state-of-the-art medical center capable of providing quality healthcare. After the completion of the project, the applicant believes it will be in position to provide services much more efficiently and improve patient experience.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The conversion of these beds will help the facility move towards the DOH planning optimum while meeting the healthcare needs of the local community.

**Program Summary**

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

**Financial Summary**

The total project costs of \$34,711,217 will be funded by SMC's accumulated funds. The projected budget is as follows:

Revenues:	\$197,823,850
Expenses:	<u>191,887,145</u>
Net Income:	\$5,936,705

## 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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. These drawings must resolve all issues noted in the request for additional information dated March 11, 2016. [AER]

**Approval conditional upon:**

1. The project must be completed within five 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-05, prior to the applicant's start of construction. [AER]
3. Construction must start on or before 8/1/2016 and construction must be completed by 8/1/2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

## Need Analysis

### Background/Analysis

Samaritan Medical Center is a 290-bed hospital and Level 2 Perinatal Center in Watertown, Jefferson County.

	Current Beds	Discharges			Occupancy		
		2012	2013	2014	2012	2013	2014
<b>Medical/Surgical</b>	192	5,074	5,353	5,207	41.5%	45.7%	41.8%
<b>Pediatric</b>	27	385	317	230	11.2%	10.0%	7.6%
<b>Obstetric</b>	24	1,814	1,797	1,786	50.9%	47.4%	47.1%
<b>General Psychiatric</b>	32	1,146	1,219	1,164	82.0%	72.0%	71.8%
<b>High-Risk Neonates</b>	15	43	56	52	3.4%	4.9%	4.1%
<b>Total</b>	290	8,567	8,822	8,492	42.6%	43.7%	40.6%

Note: 2015 data is incomplete

Pediatric utilization has decreased from 11.2 percent in 2012 to 7.9 percent in 2015. A reduction in beds from this area would raise occupancy of remaining beds and put more resources in areas where SMC projects greater need in the near future.

As SMC serves nearby Fort Drum which is without a hospital of its own, utilization of its services is greatly impacted by the needs of and fluctuations in the military population and their families. At the same time, SMC must also address the needs of the surrounding rural communities. This proposal will allow them to do both.

The following bed chart for Samaritan Medical Center is provided for reference.

Bed Type	Current Beds	Bed Change	Beds Upon Completion
Coronary Care	4		4
Intensive Care	6		6
Maternity	24	5	29
Medical / Surgical	166		166
Neonatal Intensive Care	7		7
Neonatal Intermediate Care	8		8
Pediatric	27	-7	20
Physical Medicine and Rehabilitation	16		16
Psychiatric	32	2	34
<b>Total</b>	<b>290</b>	<b>0</b>	<b>290</b>

### Conclusion

The reallocation of beds together with the proposed facility improvements will better position Samaritan Medical Center to meet the needs of its service area.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Samaritan Medical Center, an existing 290 bed Article 28 Acute Care Hospital, located at 830 Washington Street, in Watertown (Jefferson County), requests approval to perform renovation and expansion to several units of the hospital and convert seven pediatric beds to five maternity and two psychiatric beds.

This project represents the final phase of Campus Master Plan where Samaritan identified several priorities to improve existing patient care and support service departments. The current room configurations for Samaritan's maternity, pediatrics, NICU and mental health inpatient units do not allow for family-centered patient care. All of the improvements in this project will provide an improved patient experience, easier patient and visitor accessibility and service levels that should be much more efficient.

### 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, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project costs for the renovation and acquisition of moveable equipment is estimated at \$34,711,217, broken down as follows:

New Construction	\$6,322,800
Renovation & Demolition	17,932,750
Site Development	560,000
Asbestos Abatement or Removal	770,000
Design Contingency	2,205,050
Construction Contingency	1,917,650
Architect/Engineering Fees	1,839,224
Construction Manager Fees	699,315
Movable Equipment	2,272,572
Application Fees	2,000
Additional Processing Fees	189,856
Total Project Cost	\$34,711,217

Total project costs are based on a construction start date of August 1, 2016, with a four-year construction period.

The total project costs will be funded from SMC's accumulated funds.

## Operating Budget

The applicant has submitted an incremental operating budget, in 2016 dollars, for the first and third years, as summarized below:

	<u>Per Discharge or Per Visit</u>	<u>Current Year</u>	<u>Per Discharge or Per Visit</u>	<u>Years One and Three</u>
<u>Revenue</u>				
Revenue - Inpatient	\$7,729.98	\$83,035,489	\$7,729.98	\$83,035,489
Revenue - Outpatient	\$409.90	\$108,407,875	\$409.90	\$108,407,875
Other Operating Income *		<u>\$6,380,486</u>		<u>\$6,380,486</u>
Total Revenue		\$197,823,850		\$197,823,850
<u>Expenses</u>				
Operating-Inpatient	\$8,545.21	\$91,792,616	\$8,545.21	\$91,792,616
Operating-Outpatient	\$322.40	\$85,265,580	\$322.40	\$85,265,580
Capital-Inpatient	\$606.26	\$6,512,451	\$737.58	\$7,923,127
Capital-Outpatient	\$25.34	<u>\$6,701,973</u>	\$26.11	<u>\$6,905,822</u>
Total Expenses		\$190,272,620		\$191,887,145
Net Income		<u>\$7,551,230</u>		<u>\$5,936,705</u>
Utilization (Inpatients Days)		10,742		10,742
Utilization (Outpatient Visits)		264,471		264,471
Inpatient cost per Discharge		\$9,151		\$9,283
Outpatient Cost per Visit		\$348		\$349

\*Other Operating Income consists of Grants, Cafeteria, Library, Medical Education, Physician Services and Refunds.

The following is noted with respect to the submitted budget:

- Expense assumptions are based upon SMC's historical experience and adjusted for investment. Capital expenses are projected to increase by 1% in year one (held constant for year three).
- Revenue assumptions are based on the SMC's actual 2014 payor mix experience and held constant for year one and three.
- Utilization assumptions are based on the facility's current per day occupancy pattern and current outpatient visits and held constant for year one and year three.

Inpatient and outpatient utilization by payor source for the first and third years is anticipated as follows:

<u>Payor</u>	<u>Years One and Three</u>		
	<u>Discharges</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	1,850	49,025	18.49%
Medicare-FFS	3,595	94,853	35.87%
Commercial-FFS	1,820	54,811	20.72%
Private Pay	335	8,182	3.09%
All other	<u>3,142</u>	<u>57,600</u>	<u>21.78%</u>
Total	10,742	264,471	100.00%

## Capability and Feasibility

Total project cost of \$34,711,217 will be satisfied from the accumulated funds of SMC. The cash outflow for the project will span over the four-year construction period. The applicant has sufficient cash reserves currently for the project. The incremental working capital requirement is estimated at \$269,088 based upon two months of Year Three incremental expenses. The applicant will provide working capital from ongoing operations. BFA Attachment A is SMC's 2013 - 2014 certified financial statements, which indicates the availability of sufficient resources to fund the project's equity and working capital requirements.

The submitted budget indicates an excess of revenues over expenses of \$5,936,705 in Year One and in Year Three. Revenues are projected based on current experience and payor mix and assumes no growth in volumes over the next three years.

As shown on BFA Attachment A, SMC has maintained an average working capital position of \$143,440,725 and an average net asset position of \$282,817,814 for the 2013 - 2014 period. BFA Attachment B is SMC's internal financial summary as of November 30, 2015, which shows positive income from operations of \$4,586,492.

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

Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

BFA Attachment A    Financial Statement for 2013 and 2014, Samaritan Medical Center  
BFA Attachment B    Internal Financial Summary for November 30, 2015, Samaritan Medical Center





**Project # 161037-C  
Southampton Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Suffolk  
Acknowledged: January 27, 2016**

**Executive Summary**

**Description**

Southampton Hospital (SH), a 125-bed acute care hospital located at 240 Meeting House Lane in Southampton, requests approval to construct and certify a cancer center extension clinic to be located at 740 County Road 39A, Southampton (Suffolk County). Providing linear accelerator and CT simulation services, the facility will operate under the name Southampton Hospital Phillips Family Cancer Center.

The Hospital will purchase a 2.2 acre parcel of land and construct a 13,200 square foot, two-story building on the site that will house the proposed Article 28 extension clinic and other non-Article 28 services. The Article 28 clinic will be located in separate and distinct space from the non-Article 28 services. The Article 28 space, which will include linear accelerator and CT simulation services, will be located on the 1<sup>st</sup> floor of the building and will encompass 7,803 square feet. The non-Article 28 services will include a physician private practice for medical oncology located on the 2<sup>nd</sup> floor of the new building.

On December 14, 2015, SH was contingently approved by the Public Health and Health Planning Council (PHHPC) to become a Division of University Hospital (CON 152083).

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Southampton Hospital proposes to certify an extension clinic in Suffolk County. The site will be certified for Therapeutic Radiology and Medical Services - Other Medical Specialties operating one linear accelerator and one CT simulator. The applicant projects 4,008 in Radiology-Therapeutic treatments in Year 1 and 4,456 in Year 3.

**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 \$20,361,543 will be met with \$3,461,543 in accumulated funds, \$2,900,000 in appraised land value, and \$14,000,000 in a Bank Mortgage financed over 15 years at 3.7% and amortized over 25 years. The projected incremental budget is as follows:

Revenues:	\$3,461,726
Expenses:	<u>3,163,627</u>
Gain:	\$298,099

The project includes non-Article 28 space, therefore total reimbursable cost is limited to \$14,081,532.

## 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 commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-03, for review and approval. [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 must validate to the Department of Health that the actual Land purchase has taken place by submitting an executed copy of the Bill of Sale. [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, prior to the applicant's request for, and the Department's granting approval for the start of construction. [DAS]
8. Construction must start on or before September 1, 2016 and construction must be completed by March 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

# Need Analysis

## Project Description

Southampton Hospital is seeking approval to establish an Article 28 extension clinic to be located at 740 County Road 39, Southampton, 11968, in Suffolk County. This project includes the addition of one linear accelerator.

## Background and Analysis

The primary service area for the proposed extension clinic is eastern Long Island which includes the following zip codes: 11937, 11930, 11932, 11968, 11946, 11963, 11962, 11954, 11901, 11942, 11959, 11960, 11976, 11977, and 11978. There are currently no Article 28 linear accelerator machines located on the east end of Long Island. The closest existing Article 28 linear accelerator to this proposed clinic is at John T. Mather Hospital's extension clinic in East Setauket, which is 45 miles and 53 minutes away.

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Nassau-Suffolk region live within one hour's driving time of a LINAC. Furthermore, need for LINAC machines is determined by assuming 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 table below shows a need for 16 LINAC devices (linear accelerators) in the Nassau-Suffolk health planning region:

	<b>LINAC Need in Nassau-Suffolk Region</b>	<b>Total</b>
1	# of Cancer Cases/Year	17,741
2	60% will be Candidates for Radiation Therapy	10,644
3	50% of (2) will be Curative Patients	5,322
4	50% of (2) will be Palliative Patients	5,322
5	Course of Treatment for Curative Patients is 35 Treatments	186,276
6	Course of Treatment for Palliative patients is 15 Treatments	79,833
7	The Total Number of Treatments [(5)+(6)]	266,109
8	Need for LINAC Machines <sup>1</sup> [(7)/6,500]	41
9	Existing/Approved Resources (Upon Approval of CON 161037)	25
10	Remaining Need for LINAC Machines [(8)-(9)]	16

<sup>1</sup>Each LINAC Machine has capacity for 6,500 Treatments

The Nassau-Suffolk health planning region has a total of thirteen facilities - eight hospitals and five hospital extension clinics - providing linear accelerator services as follows:

<b>Current Resources</b>	<b># Facilities With LINAC Services</b>			<b># LINAC Machines</b>		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
Nassau-Suffolk Region						
Nassau	5	2	7	8	5	13
Suffolk <sup>1</sup>	3	3	6	6	5	11
Region Total	8	5	13	16	10	24

<sup>1</sup> Includes approved resources under CON 132150 which is not yet operational.

This project should lower the number of residents of the Nassau-Suffolk region who are more than an hour drive to the closest LINAC. The proposed clinic is 53 minutes driving time from the closest LINAC facility, which is located in East Setauket, Suffolk County.

## Conclusion

There is currently no LINAC provider within the primary service area of eastern Long Island. Approval of this project will provide for the continuity of care for cancer patients in the region by filling a void for LINAC services within eastern Long Island and the surrounding communities of Suffolk County. After approval of this project, there will still be a need for 16 additional LINAC devices in the Nassau-Suffolk planning region.

## Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Project Proposal

Southampton Hospital, an existing Article 28 facility located at 240 Meeting House Lane in Southampton (Suffolk County), seeks approval to construct an extension clinic to be built at 740 County Road 39A in Southampton. The proposed 13,200 square foot extension clinic will be located about 1.2 miles and four minutes travel time from the hospital.

The new two-story building will house the proposed Article 28 extension clinic and other non-Article 28 services. The Article 28 space (located in separate and distinct space from the non-Article 28 services) will provide linear accelerator and CT simulation services on the 1<sup>st</sup> floor of the building. Non-Article 28 services within the new building will include a private practice medical oncology practice on the 2<sup>nd</sup> floor.

This project will enhance the Hospital's oncology capabilities, provide the Hospital with the ability to handle the growing demand for high-quality linear accelerator services, and improve patient accessibility to services. Typically, patients receive linear accelerator services several times a week for at least a couple of weeks. At present, there is no Article 28 linear accelerator located on the east end of Long Island and within the primary service area of Southampton Hospital.

Staffing will consist of 5.79 FTEs in the first year after completion and has been project to be 6.11 FTEs by the third year of operation.

The site will be certified for Radiology – Therapeutic and Medical Services – Other Medical Specialties.

## 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, approval is recommended.**

## Financial Analysis

### Contract of Sale

The applicant has submitted an executed Contract of Sale agreement for the parcel of land on which the new extension clinic will be built. The terms of the agreement are summarized below:

Date:	May 7, 2015
Purchaser:	Southampton Hospital Association
Seller:	Bertha Stachecki, Loretta Lynch, Joseph R. Stachecki and Henrietta J. Stachecki
Purchased Land:	Property with all buildings and improvements thereon at 740 County Road 39A, Southampton, NY 11968
Purchase Price:	\$3,175,000
Payment of Purchase Price:	\$317,500 cash deposit to be held in escrow with the remaining cash of \$2,857,500 at time of closing.

Clark & Marshall appraisers has determined the Market Value at \$2,900,000. The actual purchase will take place after final approval from the PHHPC.

### Total Project Cost and Financing

Total project cost for land, new construction and the acquisition of fixed and moveable equipment is estimated at \$20,361,543, broken down as below. However, the Bureau of Architectural and Engineering Review has determined that this project includes costs of \$6,280,011 for non-Article 28 space. As a result, the total approved project cost for reimbursement purposes shall be limited to \$14,081,532.

Land	\$2,900,000
New Construction	9,472,890
Site Development	1,150,496
Design Contingency	473,644
Construction Contingency	473,644
Fixed Equipment	3,874,265
Planning Consultant Fees	246,247
Architect/Engineering Fees	780,000
Other Fees (Consultant)	26,000
Movable Equipment	46,440
Financing Costs	407,236
Interim Interest Expense	431,667
CON Application Fee	2,000
Additional Processing Fee	<u>77,014</u>
Total Project Cost	<u>\$20,361,543</u>

**Total Reimbursable Cost** **\$14,081,532**

Project costs are based on a September 1, 2016 construction start, and an 18-month construction period.

The applicant's financing plan appears as follows:

Equity	\$3,461,543
Land	2,900,000
Bank Mortgage (15-year term, 25-year amortization, 3.7% interest)	\$14,000,000

IDB Bank (Israel Discount Bank of New York) has provided a letter of interest for the mortgage at the above terms. The applicant stated that they expect to refinance the balance remaining when the loan comes due at the end of the 15-year term. BFA Attachment C is the mortgage table for the loan, which indicates an ending balance of \$7,172,309 after the 15-year term ends. BFA Attachment A shows sufficient funds to fund the remaining balance, if necessary.

A land appraisal by a member of the Members Appraisal Institute has been submitted with a land value of \$2,900,000.

#### Operating Budget

The applicant has submitted an incremental operating budget, in 2016 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues		
Medicare	\$1,034,777	\$1,196,890
Medicaid	30,141	34,762
Commercial	1,839,709	2,130,559
Private Pay	11,335	12,958
Other*	<u>75,061</u>	<u>86,557</u>
Total Revenue	\$2,991,023	\$3,461,726
Expenses		
Operating	\$1,596,438	\$1,928,434
Capital	<u>1,257,587</u>	<u>1,235,193</u>
Total Expenses	\$2,854,745	\$3,163,627
Excess of Revenues over Expenses	<u>\$136,278</u>	<u>\$298,099</u>
Visits	4,008	4,456

\*Other represents the patients who are on a sliding fee scale for payment.

Utilization by payor source for outpatient services for years one and three, is as follows:

Medicare	45.0%
Commercial	40.0%
Medicaid	7.5%
Private Pay	3.2%
Other*	4.3%

Utilization, revenue and expense projections are based on the feasibility study performed by ECG Management Consultants and the expected market share of services within the SH service area.

#### Capability and Feasibility

The project cost, \$20,361,543 will be met through \$3,461,543 accumulated funds, \$2,900,000 appraised land value and a \$14,000,000 mortgage at 3.7% with a 15-year term amortized over 25 years. BFA Attachment A is a financial summary for Southampton Hospital Association and Affiliates, which indicates the availability of sufficient funds.

The submitted incremental budget indicates an excess of revenues over expenses of \$136,278 and \$298,099 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for services. The budget appears reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements of the Southampton Hospital Association and Affiliates. As shown, the entity had a positive working capital position and an average positive net asset position for the period shown. The entity shows an average excess of revenues over expenses of \$6,621,071.

BFA Attachment B is the internal financial statements of the Southampton Hospital Association and Affiliates as of December 31, 2015. As shown, the entity has a positive working capital position and a positive net asset position. The entity shows a \$559,772 excess of revenue over expenses after non-operating gains.

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.**

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## Attachments

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BFA Attachment A	Financial Summary, Southampton Hospital 2013-2014
BFA Attachment B	Financial Summary, Southampton Hospital 2015 internals
BFA Attachment C	Mortgage Amortization Schedule



- 152231-C – Niagara Falls Memorial Medical Center
- 152232-C – Catholic Health System (Mercy Hospital of Buffalo)
- 152234-C – Erie County Medical Center
- 152245-C – Kaleida Health System (Buffalo General Medical Center)

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

**County:** Niagara  
**Acknowledged:** November 24, 2015

### Executive Summary

#### Description

Niagara Falls Memorial Medical Center (NFMMC), Kaleida Health System - Buffalo General Medical Center (Kaleida), Catholic Health System - Mercy Hospital of Buffalo (Mercy) and Erie County Medical Center (ECMC) request approval to construct and jointly license a percutaneous cardiac intervention (PCI) capable cardiac catheterization lab (Cath Lab) on the second floor of Niagara Falls Memorial Medical Center. These applications are in response to the Public Health and Health Planning Council’s directive at their October 6, 2011 meeting, for the competing local area hospitals to develop a collaborative PCI/Cath Lab solution to serve Niagara County’s residents.

NFMMC is a 171-bed, voluntary, acute care hospital located at 621 Tenth Street, Niagara Falls (Niagara County). The other three hospitals are all located in Erie County. There are currently no Cath Labs in Niagara County.

NFMMC policies, procedures, and Medical Staff Bylaws will govern the activities of the Cath Lab, and the financial operations, including producing the related financial statements, will be fully integrated within the financial system of NFMMC. The Cath Lab’s finances will be managed through a dedicated Joint Venture Fund (JV Fund) and operating expenses, as approved by the Governing Body, will be funded through the JV Fund. Capital costs approved by the Governing Body will also be addressed

through the JV Fund. An agreed-upon Dispute Resolution Procedure is provided for in the Joint Operating Agreement (JOA). Operational revenues and expenses will be shared 30:30:30:10, with ECMC holding the 10% share as delineated in the JOA.

The proposed project will not result in a major increase in patient volume, but will provide a change in service location to improve patient access by bringing care closer to the patients. The two Delivery System Reform Incentive Program (DSRIP) Performing Provider Systems (PPS) in Western New York (WNY), Millennium Collaborative Care and Community Care Partners of WNY, are working collaboratively to address DSRIP’s Improve Cardiovascular Health Project (Project 3.b.i.) and support the project.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

The goal of the cardiac services need methodology (Section 709.14 of Title 10) is to maintain provider volumes associated with high quality outcomes and avoid the unnecessary duplication of services. This application meets the necessary requirements outlined in the methodology and will bring a needed service to the area. Niagara County’s African-American and Medicaid populations are undertreated and



underserved. Operation of a cardiac catheterization laboratory at NFMMC will close disparity gaps and provide access to life-saving diagnostic and therapeutic treatment.

#### Program Summary

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

#### Financial Summary

Total project costs of \$2,177,027 will be met through the co-operators' equity investment, at \$653,108 for each facility with a 30% ownership, and \$217,703 for ECMCC who has a 10% interest. In addition, NFMMC has submitted a grant request through the NYS Capital

Restructuring Finance Program for \$1.08 million. If funding is awarded, the grant proceeds will be used to help offset the cost of the Cath Lab equipment. The projected budget is as follows

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,161,907	\$8,905,129
Expenses	<u>\$7,062,688</u>	<u>\$7,850,988</u>
Gain	\$ 99,219	\$1,054,141

# 152231-C – Niagara Falls Memorial Medical Center 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 NYSE-CON upon mailing it. [PMU]
2. Submission of a photocopy of the amended Joint 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]
2. The same team (including the interventionalist and support services) that support quality outcomes at Buffalo General shall also be at NFMCC. [HSP]
3. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
4. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
5. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]
6. 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]
7. Construction must start on or before July 1, 2016 and construction must be completed by February 1, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

152232-C – Catholic Health System  
(Mercy Hospital of Buffalo)  
Recommendations

Health Systems Agency

There will be no HSA recommendation for these projects.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the amended Joint 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]
2. The same team (including the interventionalist and support services) that support quality outcomes at Buffalo General shall also be at NFMCC. [HSP]
3. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
4. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
5. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]

Council Action Date

**April 14, 2016**

# 152234-C – Erie County Medical Center Recommendations

Health Systems Agency

There will be no HSA recommendation for these projects.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the amended Joint 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]
2. The same team (including the interventionalist and support services) that support quality outcomes at Buffalo General shall also be at NFMCC. [HSP]
3. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
4. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
5. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]

Council Action Date

**April 14, 2016**

152245-C – Kaleida Health System  
(Buffalo General Medical Center)  
Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

2. Submission of a photocopy of the amended Joint 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]
2. The same team (including the interventionalist and support services) that support quality outcomes at Buffalo General shall also be at NFMCC. [HSP]
3. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
4. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
5. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]

Council Action Date

**April 14, 2016**

# Need Analysis

## Background

Niagara Falls Memorial Medical Center is a 171 bed hospital located at 621 Tenth Street Niagara Falls. NFMCC is a Level 1 Perinatal Center and a Stroke Center.

Upon approval, Niagara Falls Memorial Medical Center will add the following certified services to its operating certificate:

- Cardiac catheterization – adult diagnostic;
- Cardiac catheterization – percutaneous coronary intervention;

15.3% of New York State residents live below the federal poverty level. Niagara County has 13.7% and the City of Niagara Falls 24.9%. According to the NYS Poverty Report released by the New York State Community Action Association in March 2013, the poverty rate in the City of Niagara Falls for African-Americans is nearly twice as high as the Caucasian poverty rate. The number of Niagara Falls residents living in poverty has grown by 2% since the 2000, a significant percentage when put in context of the city's overall population decline of 9% since 2000.

Currently, Niagara County residents must leave their home county and travel significant distances to access cardiac catheterization services in either Erie County or outside of Western New York. Typically, 125 minutes lapse between the times a Niagara County resident experiences the signs of a heart attack and when the patient can begin to receive treatment at an Erie County-based facility. During inclement weather, the interval may stretch to 155-160 minutes. The timeline exceeds the national standard for providing an intervention.

Distance is not the only barrier to timely services. A large percentage of households in Niagara County have no access to a motor vehicle and rely on alternative modes of travel, such as walking and public transit. Placing a cath lab in the heart of the community could prevent unnecessary transfers out of Niagara County and bring cardiac care closer to home. Niagara's catheterization patients would be able to receive care in their home county and stay connected to their cardiologists and primary care physicians after the procedure.

A review of health status indicators for Niagara County reveals several underlying problems:

- The percentage of obese adults is 31.3% compared to a rate of 24.9% for New York State.
- The percentage of cigarette smoking among adults is 20.6% in Niagara County versus 17.6% in New York State (exclusive of NYC).
- The age-adjusted percentage of adults with physician diagnosed angina, heart attack or stroke is 41% higher in Niagara County than the statewide rate; 10.7% in Niagara compared to 7.6% in New York State.
- Niagara County has a 34% rate of hypertension as compared to a New York State rate of 26.8%.

## Analysis

The Cardiac Catheterization Laboratory project has three major aims:

- Eliminate barriers to care through the operation of a Niagara County-based cardiac catheterization laboratory;
- Improve the management of heart disease through the use of best practices;
- Wage a strong and sustained campaign to prevent heart disease.

NFMCC, Mercy, and Kaleida will each appoint three representatives and ECMC will appoint one representative to a Clinical Committee which will provide clinical direction to and oversight of cardiac catheterization laboratory activities, including quality assurance, utilization review and the coordination and integration of services.

The planning area for PCI capable catheterization laboratories is one hour average surface travel time.

Volume Requirements per regulation:

- *Section 709.14(d)(1)(ii)(c): All PCI capable cardiac catheterization laboratory centers must yield 36 emergency PCI procedures per year within the first year of operation and at least 200 total PCI cases per year within two years of start-up.*
  - The standard will be met:
    - It is projected there will be 152 emergency PCI procedures performed in the first year of the Lab's operations and 562 PCI procedures performed in the third year of operation. Both the number of emergency PCIs and total PCI cases will exceed the above referenced minimums.
- *Section 709.14(d)(1)(ii)(k): Where public need is established herein, priority consideration shall be given to applicants that can demonstrate projected volume in excess of 300 PCI cases per year.*
  - This standard will be met:
    - Projected volume is 562 PCI cases in the third year of operation.

Heart disease is the number one cause of death in Niagara County (Vital Statistics Data, March 2014). Niagara County's age-adjusted cardiovascular disease rate per 100,000 residents is 287.8 versus a New York State rate of 234.6/100,000. The county has the fourth highest cardiovascular disease mortality rate in the state.

In 2010, the PCI volume for residents of Niagara County was 670 procedures. While by 2014, the volume of procedures had declined by 20 percent to 536, there are still over 530 Niagara County residents, annually, traveling to Erie County and beyond to seek treatment. The addition of this lab to Niagara Falls Memorial Medical Center will allow residents to stay in the area.

<b>Niagara County Resident PCI Discharges, by facility</b>					
Source: Cardiac Services Program, 2010 - 2014					
<b>Hospital</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013<sup>1</sup></b>	<b>2014<sup>2</sup></b>
Buffalo General Hospital	450	396	484	494	397
Erie County Med Center <sup>3</sup>	23	37	30	4	0
Mercy Hospital	26	17	14	56	138
Millard Fillmore Hospital <sup>3</sup>	171	92	8	0	0
Olean General Hospital	0	0	0	0	1
<b>Total</b>	<b>670</b>	<b>542</b>	<b>536</b>	<b>554</b>	<b>536</b>

<sup>1</sup>Validation is nearing completion, numbers are unlikely to change

<sup>2</sup>Validation is ongoing but mostly complete; some changes possible, but unlikely to be substantive

<sup>3</sup>Not currently PCI certified

All current existing PCI capable cardiac catheterization laboratories within one hour travel time are expected to maintain a volume of at least 300 PCI procedures per year. Existing referral patterns indicate the additional service will not jeopardize the ability of surrounding facilities to maintain the requisite minimum volume. Currently, there are three hospitals licensed to perform PCI procedures in the Western region to of these, only one, Olean General Hospital, is not meeting the PCI volume standard of 300 procedures per year. However, this facility is located outside the one hour travel minimum and therefore does not impact consideration of this application.

<b>Total PCI discharges, by facility - Western Region</b>					
Source: Cardiac Services Reporting System, 2014.					
<b>Hospital</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013<sup>1</sup></b>	<b>2014<sup>2</sup></b>
Buffalo General Hospital	1,353	1,223	1,827	1,808	1,548
Mercy Hospital	689	718	741	977	1,141
Olean General Hospital	0	0	0	37	173
Millard Fillmore Hospital <sup>3</sup>	843	642	40	0	0
Erie County Medical Center <sup>3</sup>	144	165	153	23	0
<b>Total</b>	<b>3,029</b>	<b>2,748</b>	<b>2,761</b>	<b>2,845</b>	<b>2,862</b>

<sup>1</sup>Validation is nearing completion, numbers are unlikely to change

<sup>2</sup>Validation is ongoing but mostly complete; some changes possible, but unlikely to be substantive

<sup>3</sup>Not currently PCI certified

Based on 709.14(d)(2), PCI capable cardiac catheterization labs are required to maintain a minimum PCI volume of 300 procedures per year and this volume level will be maintained following the approval.

#### Conclusion

The goal of the 709.14 cardiac services need methodology is to maintain provider volumes associated with high quality outcomes and avoid the unnecessary duplication of services. This application meets the necessary requirements outlined in the methodology and will bring a needed service to the area. Niagara County's African-American and Medicaid populations are undertreated and underserved. Operation of a cardiac catheterization laboratory at NFMCC will close disparity gaps, providing access to life-saving diagnostic and therapeutic treatment.

#### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

#### Program

The proposed project will improve patient access to services by bringing care closer to patients. Providing catheterization services at NFMCC will reduce the time it takes for Niagara County residents to be connected to services from a current interval of 125 to 155+ minutes down to approximately 90 minutes—closer to the national standard for the timely provision of cardiac catheterization care.

The proposed full-service cardiac surgery backup facilities for NFMCC are positioned in Buffalo. Mercy Hospital, located at 565 Abbott Road (24.9 miles/38 minutes from NFMCC) and Buffalo General Medical Center, located at 100 High Street (22.7 miles/34 minutes from NFMCC), both have extensive experience operating Cath Labs and will ensure the safe and efficient operation of this new diagnostic and PCI-capable cath lab.

Upon approval, the NFMCC site located at 621 Tenth Street in Niagara Falls will be certified for:

- Cardiac Catheterization- Adult Diagnostic; and
- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

Staffing at NFMCC will increase by 10.8 FTEs the first year after completion and is anticipated to remain at that level through the third year of operation.

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 409.29(e)(1) and 409.29(e)(2).



The NYS Cardiac Advisory Committee (CAC) met on July 20, 2015 and unanimously recommended APPROVAL of this project (with stipulated conditions) based on need of underserved population and conditions of weather causing travel in excess of an hour.

#### 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

#### Joint Operating Agreement (JOA)

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

Date:	October 21, 2015
Parties:	Kaleida Health (Kaleida), Niagara Falls Memorial Medical Center (NFMMC), Erie County Medical Center Corporation (ECMCC) and Catholic Health System (CHS).
Location:	4,145 square feet of space on the NFMMC campus, plus storage space provided by NFMMC.
Governance:	Day-to-Day Operations: a Clinical Committee including three representatives each from Kaleida, CHS, NFMMC and the President or designee of ECMCC; Regarding questions concerning operation, including but limited to strategic and financial planning: a Governing Body including three representatives each from Kaleida, CHS, NFMMC and the President or designee of ECMCC.
Operation of the Lab:	The Cath Lab will be listed on the operating license of NFMMC; the lab and lab services will be integrated clinically with the services provided by NFMMC as follows: physicians will have staff membership and clinic privileges at NFMMC, NFMMC will maintain same monitoring and oversight of the Cath Lab, the physician director will be an employee of NFMMC, NFMMC professional committee will be responsible for oversight of medical activities, medical records will be integrated into medical records system of NFMMC, NFMMC will provide monitoring and oversight; NFMMC policies and practices will govern the activities of the lab and the production of financial statements, patients will have access to all NFMMC services and non-physician staff will be employed by NFMMC; financial operations will be fully integrated within the financial system of NFMMC, however will be treated as a separate cost center; the lab will be presented to the public as a department of NFMMC; the lab will comply with NFMMC's Medicare provider agreement and for billing purposes will be NFMMC patients; physicians practicing in the lab will be board certified (or accepted equivalent); the lab will maintain 24/7/365 capabilities; the resources of Kaleida Health and CHS will be used in recruiting Cath Lab personnel; NFMMC will have additional responsibilities as follows: billing and collections of payments, negotiation, administration and termination of agreements with managed care organizations, providing laundry and linens and books of accounts, bearing financial responsibility

	for providing patients with inpatient care after procedure and making diagnostic services available.
Financial Provisions:	\$2,500,000 will be required as capital and funded as follows: Kaleida 30%, NFMMC 30%, CHS 30% and ECMCC 10%; Cath Lab finances will be managed through a dedicated Joint Venture Fund (JV Fund); operating expenses related to the Cath Lab and approved by the Governing Body will be financed by the JV Fund and will be subject to an agreed-upon Dispute Resolution Procedure; capital costs will be addressed with JV Funds, as approved by the Governing Body; NFMMC will be responsible for recordkeeping, making payments from the JV Fund, and the JV Fund will have an annual financial review performed by a third party auditor, selected by the Governing Body.
Term:	Ten (10) years, automatic renewals for five (5) years unless one of the parties provides a six (6) month notice of intent not to renew, or if terminated by unanimous consent after five (5) years.
Distributions:	The Contribution Margin and Loss of the Cath Lab will be the amount by which the Net Cath Lab Revenues exceed Operating Expenses, and will be calculated on a quarterly basis. The Contribution Margin and Loss of the Cath Lab will be allocated to or paid by within 30 days of the end of the quarter as follows: Kaleida 30%, NFMMC 30%, ECMCC 10% and CHS 30%.

Under the terms of the JOA, the Cath Lab will be operated as a Department of NFMMC, and its financial operation will be fully integrated within NFMMC's financial system.

#### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$2,177,027, broken down as follows:

Renovation & Demolition	\$408,000
Design Contingency	40,000
Construction Contingency	44,800
Planning Consultant Fees	8,000
Architect/Engineering Fees	50,000
Movable Equipment	1,612,330
CON Application Fee	2,000
CON Processing Fee	<u>11,897</u>
Total Project Cost	\$2,177,027

Project costs are based on a start date of July 1, 2016, with a seven-month construction period.

The project will be financed by accumulated funds. The percentages and amounts to be funded by the respective parties are as follows: NFMMC 30% or \$653,108, CHS 30% or \$653,108, Kaleida 30% or \$653,108, and ECMCC 10% or \$217,703. In addition, NFMMC has submitted a grant request through the NYS Capital Restructuring Finance Program for \$1.08 million. If funding is awarded, grant proceeds will be used to help offset the cost of the Cath Lab equipment. BFA Attachments A through D are, respectively, the co-operators' 2014 certified financial statements and internal financial statements as of August 31, 2015, which shows sufficient resources to meet the equity requirement.

#### Operating Budget

The applicant has submitted their first and third year operating budgets, in 2016 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Inpatient Revenues	\$4,242,782	\$5,460,873
Outpatient Revenues	2,821,480	3,328,171
Other Operating Income*	<u>97,645</u>	<u>116,085</u>
Total Revenues-Net of Bad Debts	\$7,161,907	\$8,905,129

Inpatient Expenses	\$2,550,883	\$2,993,720
Outpatient Expenses	<u>4,511,805</u>	<u>4,857,268</u>
Total Expenses	\$7,062,688	\$7,850,988
Net Income or (Loss)	<u>\$99,219</u>	<u>\$1,054,141</u>
Utilization (Inpatient Discharges)	370	441
Utilization (Outpatient Visits)	556	661
Cost Per Inpatient Discharge	\$6,894.28	\$6,788.48
Cost Per Outpatient Visit	\$8,114.76	\$7,348.36

\*Other operating income is comprised of electrocardiogram, lab, x-ray, and stress test for cardiac cath outpatients.

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

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee-For-Service	1.08%	.83%
Medicaid Managed Care	5.14%	8.82%
Medicare Fee-For-Service	24.32%	24.24%
Medicare Managed Care	35.95%	35.15%
Commercial Fee-For-Service	15.14%	13.91%
Commercial Managed Care	15.14%	13.91%
All Other	<u>3.23%</u>	<u>3.14%</u>
Total	100.00%	100.00%

Revenue assumptions are based on current Medicare and Medicaid rate methodologies, while Commercial and all other payers are based on the co-operators' experience. BFA Attachment E is the anticipated inpatient and outpatient cases further classified into Diagnosis Related Groups (DRG).

Expense assumptions are based upon the historical experience of the co-operators' identifiable costs. The breakeven point is expected to be close to the first year's budgeted utilization.

Utilization assumptions are based on a change in service location, which is expected to improve patient access bringing care closer to Niagara County residents. At the present time, Niagara County does not have a facility that offers cardiac catheterization services, causing area residents to travel outside the community. The applicant expects the budgeted cases to come primarily from Kaleida and Mercy, with minimal to no impact on each facility.

#### Capability and Feasibility

Total project costs of \$2,177,027 will be satisfied from the co-operators' accumulated resources. Based on the co-operators' percentage interest in the JOA, project investment is expected be as follows: NFMCC 30% or \$653,108, CHS 30% or \$653,108, Kaleida 30% or \$653,108, and ECMCC 10% or \$217,703. NFMCC has submitted a grant request through the NYS Capital Restructuring Finance Program for \$1.08 million. If grant funds are awarded, they will be used to help offset the co-operators' investment in the Cath Lab equipment.

Working capital requirements are estimated at \$1,308,498 based on two months of third year expenses, which will be funded from the participants' accumulated resources. It is estimated that NFMCC will provide \$741,816 of the working capital (\$498,953 for inpatient and \$242,863 or 30% of the outpatient needs). The remaining \$566,682 in outpatient working capital will be funded as follows: CHS 30% or \$242,863, Kaleida 30% or \$242,863, and ECMCC 10% or \$80,956. Review of BFA Attachments A through D, the 2014 certified and internal financial statements as of August 31, 2015, shows sufficient resources to meet the total equity requirement.

The submitted budget projects net income of \$99,219 and \$1,054,141 for the first and third years, respectively. BFA Attachment E is the anticipated inpatient and outpatient cases, further classified by ICD-9 Classification and CPT Codes, along with the anticipated revenues. BFA Attachment F shows total equity of \$3,485,525 as the first day of operations, further broken down by co-operator (NFMMC \$1,394,924; CHS \$895,971; Kaleida \$895,971; and ECMCC \$298,659). BFA Attachment G shows the proposed allocation of Year One and Year Three surpluses. The budget appears reasonable.

Review of BFA Attachments A through D, the co-operators' 2014 certified and internal financial statements as of August 31, 2015, shows the facilities had an average positive working capital position and generated an average positive operating income. The facilities had positive net assets with the exception for Mercy Hospital of Buffalo, which had an \$8,004,000 negative position that resulted from a change in the pension obligation, other than net periodic cost. It is expected that the net asset position will resolved itself as the facility has generated an average operating income of \$15,412,817 from 2013 through August 31, 2015.

The applicants point out that the cooperative effort between the Cath Lab co-operators furthers their corporate and social missions, and is supported by the two area PPSs, Millennium Collaborative Care and Community Partners of WNY, to address DSRIP goals of improving cardiovascular health in Niagara County.

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

Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Niagara Area Management Corporation, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment B	Mercy Hospital of Buffalo, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment C	Kaleida Health, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment D	Erie County Medical Center, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment E	Distribution of Inpatient and Outpatient Cardiac Cath Diagnostic Cases
BFA Attachment F	Co-Operators Equity Contribution
BFA Attachment G	Co-Operators Anticipated Surplus Allocation



Project # 161059-T
Olean General Hospital

Program: Hospital
Purpose: Transitional Care Beds

County: Cattaraugus
Acknowledged: February 23, 2016

Executive Summary

Description

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Olean General Hospital is a voluntary not-for-profit, Article 28 acute care hospital located at 515 Main Street, Olean (Cattaraugus County). The facility, currently certified for 186 beds, requests approval to create a 16-bed Transitional Care Unit (TCU) through the conversion of a separate 15-bed sub-acute rehabilitation unit that the Hospital currently operates under a Swing Bed program (licensed as medical/surgical beds), and an additional medical/surgical bed from an acute care unit. The TCU unit will be located and self-contained on the third floor of the Hospital.

In 2009, Upper Alleghany Health System, a not-for-profit management holding corporation, became the sole corporate member and co-established operator of Olean General Hospital. Upper Alleghany Health System is also the sole corporate member of Bradford Regional Medical Center and its controlled subsidiaries, a nearby Pennsylvania hospital and health system.

OPCHSM Recommendation
Contingent Approval

Need Summary

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Program Summary

The proposed 16-bed TCU converts an existing 15-bed Swing Bed unit already configured and operating under Medicare RUGS program. Staffing for this unit has been in place since 2006 and has developed an expertise not easily replicated in the region. Conversion of the Swing Bed Unit will result in a minimal start up period for the TCU Unit. The additional bed (one medical/surgical bed) for the TCU Unit will come from another acute unit so that there will be no net increase in beds.

Financial Summary

Project costs of \$55,090 will be met with accumulated funds from Olean General Hospital. The projected operating budget is as follows:

Table with 2 columns: Category (Revenues, Expenses, Gain) and Amount (\$2,378,876, 1,784,169, \$594,707)

## 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 NYSE-CON upon mailing. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-04. The contingency must resolve all issues noted in the RFI dated 03-04-2016. [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. Construction must start on or before July 4, 2016 and construction must be completed by November 13, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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]
3. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAER Drawing Submission Guidelines DSG-04, prior to the applicant's start of construction. [AER]

Council Action Date

**April 14, 2016**

# Need Analysis

## Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

## Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

## Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Background

Olean General Hospital (OGH) is a member of Upper Allegheny Health System (UAHS), a two-hospital system located in the southwestern part of New York State and northwestern Pennsylvania (where Bradford Regional Medical Center (BRMC), the other hospital UAHS is located). Since November 2009, UAHS, the active parent of both OGH and BRMC has acted as a stabilizing platform for these two rural sister hospitals. Through common management of both hospitals, UAHS has been able to demonstrate over \$4M of joint efficiencies/savings annually for the UAHS system. This collaboration continues today. Additional efficiencies and savings as well as recapture of inpatient case volume, through such initiatives as the jointly operated cardiac catheterization lab between OGH and Kaleida Health, and the possible formal merger of OGH and BRMC to gain sole community hospital status are being pursued. These efforts will likely put the OGH average daily census allowed in order to qualify for Swing Bed designation at risk. As a result, OGH is seeking to gain TCU designation which would obviate the need for the Swing Bed unit.

The Swing Bed designation was obtained by OGH in late 2006. At that time OGH recognized the specialized needs of the sub-acute patient and established the separate sub-acute rehabilitation unit. This 15-bed unit has experienced between a 12 and 14 patient average daily census over the last few years. Specialized staff have been trained over this time to care for the patients.

### Program Review

The principal elements of the proposed TCU program are:

- Conversion of a 15-bed sub-acute rehabilitation unit that OGH currently operates under a Swing Bed program (licensed as medical/surgical beds) and conversion of an additional medical/surgical bed from an acute care unit, to be located in discrete space on the third floor of the hospital.
- Operation of the unit will:
  - help reduce unnecessary hospital readmissions;
  - enhance Olean General Hospital's ability to serve the targeted population.
- The patients served will include:
  - The most costly, complex convalescing elders that are clinically stable and would otherwise remain in an medical/surgical bed;
  - those in need of coordinated multi-level rehabilitation; and
  - frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of four double-bedded rooms and eight single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who while clinically stable still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include



those who may need an additional few days of rehabilitation prior to discharge to home as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care. Conversion of the Swing Bed Unit to the TCU will result in a minimal start up period for the TCU Unit.

In addition, Olean General Hospital has identified: collaborative relationships with community providers; a strategy for treating patients in the TCU; TCU specific discharge policies; comprehensive staffing to include physician coverage; and agrees to submit clinical and operational data on at least an annual basis as defined by the Department.

Recommendation

**From a programmatic perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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**Total Project Costs**

Total project costs for renovations and the acquisition of movable equipment are estimated at \$55,090, broken down as follows:

Renovation & Demolition	\$ 35,000
Design Contingency	3,500
Construction Contingency	3,500
Architect/Engineering Fees	4,000
Movable Equipment	6,800
Application Fee	2,000
Additional Processing Fee	<u>290</u>
<b>Total Project Cost</b>	<b>\$55,090</b>

Project costs are based on a construction start date of July 4, 2016. The Hospital will finance total project costs through accumulated funds.

**Operating Budgets**

The applicant has submitted a separate operating budget in 2016 dollars for the conversion of the sub-acute rehabilitation unit to the TCU, for the first and third years, as summarized below:

	<u>Year One and</u> <u>Year Three</u>
Revenues	\$2,378,876
Expenses	
Operating	\$1,780,469
Depreciation and Rent	<u>3,700</u>
<b>Total Expenses</b>	<b>\$1,784,169</b>
<b>Net Income</b>	<b><u>\$594,707</u></b>
Utilization - Patient Days	5,263
Cost Per Patient Day	\$339.00

The separate TCU operating budget does not depict any additional services. Utilization for the first and third years is 100% Medicare.

Expense and utilization assumptions are based on the historical experience of Olean General Hospital's inpatients who currently occupy the sub-acute rehabilitation unit as a Swing Bed Program for rural hospitals. Revenues have been adjusted to reflect the blended rate based on the RUGS for Medicare and the expenses include the additional depreciation on total project costs.

#### Capability and Feasibility

Project cost will be satisfied by accumulated funds from Olean General Hospital. BFA Attachment A is the financial summary of the Hospital showing sufficient funds.

Working capital will come from hospital operations, since the beds are being converting from Swing Beds to TCU beds.

The submitted budget indicates a net income of \$594,707 during the first and third years of operation. The Medicare revenues were based on a blend of DRGs associated with Olean General Hospital's medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

As shown on BFA Attachment A, Olean General Hospital maintained a positive net asset position, working capital and net income from operations in 2013 and 2014. BFA Attachment B is the internal financial summary of Olean General Hospital as of December 31, 2015, which shows the Hospital maintained \$1,670,387 net income from operations in 2015.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary of Olean General Hospital- 2013 and 2014
BFA Attachment B	Financial Summary of Olean General Hospital - 2015 internals



Project # 161061-T
Helen Hayes Hospital

Program: Hospital
Purpose: Transitional Care Beds

County: Rockland
Acknowledged: February 23, 2016

Executive Summary

Description

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Helen Hayes Hospital is a public (State) Article 28 facility located at 51 N Route 9W, West Haverstraw (Rockland County). Helen Hayes operates a 130-bed acute care hospital and a 25-bed residential health care facility (RHCF). The applicant requests approval to create a 24-bed Transitional Care Unit (TCU) through the conversion of 18 medical/surgical beds and six physical medicine and rehabilitation beds. The TCU unit will be located in an existing, vacant medical/surgical unit on the first floor of the hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Program Summary

Helen Hayes Hospital is seeking approval to convert 18 medical/surgical beds and six physical medicine and rehabilitation beds to 24 TCU beds. As part of this initiative, hospitals, physicians and other post-discharge providers will work together to more closely coordinate care, leading to better outcomes, a better experience for the patient, and fewer complications such as preventable readmissions, infections or prolonged rehabilitation and recovery.

Financial Summary

Project costs of \$44,874 will be met with accumulated funds. The proposed incremental budget is as follows:

Table with 2 columns: Category, Amount. Rows: Revenues (\$2,225,218), Expenses (645,762), Gain (\$1,579,456)

## 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 NYSE-CON when mailed. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-04 Nursing Homes. These drawings must resolve all issues noted in the request for additional information dated March 7, 2016. [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. Construction must start on or before September 1, 2016 and construction must be completed by September 22, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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]
3. 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)

Council Action Date

**April 14, 2016**

# Need Analysis

## Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

## Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

## Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Background

Helen Hayes Hospital is located at 51-55 Route 9W North, West Haverstraw (Rockland County). Helen Hayes operates a 130-bed acute care hospital and a 25-bed residential health care facility (RHCF). The applicant requests approval to create a 24-bed Transitional Care Unit (TCU) through the conversion of 18 medical/surgical beds and six physical medicine and rehabilitation (PMR) beds.

Helen Hayes' 130-bed acute care hospital includes 82 physical medicine and rehabilitation beds, 18 medical/surgical beds, six coma recovery beds and 24 traumatic brain injury beds. The 82 physical medicine and rehabilitation beds qualify as an inpatient rehabilitation facility (IRF) for Medicare reimbursement purposes. Helen Hayes, as a specialty medical rehabilitation provider to the residents of the seven-county Hudson Valley region, is equipped with the services, programs, staff, equipment and expertise to provide comprehensive rehabilitation services to patients with all disabilities and at all levels.

### Program Review

The principal elements of the proposed TCU program are:

- Conversion of 18 medical/surgical beds and six physical medicine and rehabilitation beds to a 24-bed TCU, to be located in an existing, vacant unit on the first floor of the hospital.
- Operation of the unit will:
  - reduce the length of stay at the medical/surgical and PMR beds;
  - help reduce unnecessary hospital readmissions;
  - enhance Helen Hayes' ability to serve the targeted population.
- The patients to be served will include:
  - The most costly, complex convalescing elders that are clinically stable and would otherwise remain in medical/surgical beds;
  - those in need of coordinated multi-level rehabilitation; and
  - frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of ten double-bedded rooms and four single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who, while clinically stable, still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home, as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and

Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

As documented in the application, the lack of appropriate post-discharge alternatives for intensive rehabilitation in the Hudson Valley region has led to the need for a TCU for this specific community. In order to meet the New York State Department of Health's primary goal for the TCU Demonstration Program – improving quality outcomes for patients with TCU conditions through the provision of restorative care to maximize the patient's level of function and independence – Helen Hayes proposes to focus its unit primarily on those rehabilitation DRG clusters that can lead to high levels of excess days at acute hospitals when appropriate post-discharge placements are not available. These rehabilitation DRG clusters are anticipated to lead to an increased demand for TCU beds as a result of the migration from the International Classification of Diseases (ICD) system from ICD-9 to ICD-10 and a new CMS mandate for bundled payments for hip and knee replacement surgeries.

The change to ICD-10, which increased specificity of diagnoses (there are nearly five times as many diagnosis codes in ICD-10 than in ICD-9), means that patients who qualified under the Center for Medicare & Medicaid Services' (CMS) IRF criteria for post-acute care placement in a physical medicine and rehabilitation bed under ICD-9 may not have a qualifying diagnosis under ICD-10. This will result in Helen Hayes turning away admission referrals from other hospitals for patients who do not meet the IRF criteria due to the unavailability of subacute beds. While the average annual occupancy percentage of Helen Hayes' existing 25-bed RHC unit is approximately 85%, the unit occupancy fluctuates weekly; on numerous occasions, the occupancy percentage is over 96%, meaning that Helen Hayes must sometimes turn away referrals for subacute care.

The CMS mandate, which will begin on April 1, 2016, is that hospitals in the New York-Newark-Jersey City, NY-NJ-PA MSA, which encompasses five of the seven Hudson Valley Region counties (Dutchess, Orange, Putnam, Rockland and Westchester County), participate in a 90-day bundled payment initiative for hip and knee replacement surgeries. Under that CMS initiative, the hospital in which the hip or knee replacement takes place is accountable for the costs and quality of care from the time of the surgery through 90 days post-surgery. Depending on the hospital's quality and cost performance during the episode of care, the hospital will either earn a financial reward or be required to repay Medicare for a portion of the costs. As part of this initiative, hospitals, physicians and other post-discharge providers are to work together to more closely coordinate care, leading to better outcomes, a better experience for the patient, and fewer complications such as preventable readmissions, infections or prolonged rehabilitation and recovery.

Helen Hayes has existing collaborative relationships with many hospitals and RHCs in the region and has already received a memorandum of understanding (MOU) from two of those facilities, the New York State Veterans Home at St. Albans (Queens County) and the New York State Veterans Home at Montrose (Westchester County), in keeping with the stated goals of this TCU Demonstration Program. In addition, Helen Hayes has received two letters of support from area hospitals, New York-Presbyterian Hospital and Good Samaritan Hospital of Suffern.

Additionally, Helen Hayes Hospital has identified: collaborative relationships with long term care, durable medical equipment, and Community providers; a sound strategy for treating patients in the TCU; discharge policies; appropriate staffing to include physician coverage; and an agreement to forward clinical and operational data on an annual basis as defined by the Department.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Costs

Total project costs for renovations are estimated at \$44,874, broken down as follows:

Renovation & Demolition	\$ 32,926
Design Contingency	3,293
Construction Contingency	3,293
Architect/Engineering Fees	3,127
Application Fee	2,000
Additional Processing Fee	<u>235</u>
Total Project Cost	<u>\$44,874</u>

Project costs are based on a September 1, 2016 construction start date and a one month construction period. Helen Hayes Hospital will finance total project costs through accumulated funds.

### Operating Budgets

The applicant has submitted an incremental operating budget in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,932,970	\$2,225,218
Expenses		
Operating	\$558,323	\$643,518
Depreciation and Rent	<u>2,244</u>	<u>2,244</u>
Total Expenses	\$560,567	\$645,762
Net Income	<u>\$1,372,403</u>	<u>\$1,579,456</u>
Utilization - Patient Days	2,897	3,335
Cost Per Day	\$193.50	\$193.63

Utilization for the first and third years is 100% Medicare. Expense and utilization assumptions are based on the historical experience of Helen Hayes Hospital inpatients. The budget appears reasonable.

### Capability and Feasibility

Project cost will be satisfied with accumulated funds from Helen Hayes Hospital. BFA Attachment A is the financial summary of the Hospital showing sufficient funds. Working capital of \$107,627 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$1,372,403 and \$1,579,456 during the first and third years of operation. The Medicare revenues are based on a blend of the DRGs associated with Helen Hayes' medically complex patients and the excess days these patients spent in the Hospital.

As of March 31, 2015, Helen Hayes Hospital maintained a positive net asset position, positive working capital and a net operating loss of \$27,089,074, which was offset by \$29,368,919 in supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds to support its operations. As of August 31, 2015, Helen Hayes was maintaining a net income from operations of \$2,683,196 before supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds.

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

### Recommendation

**From a financial perspective, approval is recommended.**



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## Attachments

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BFA Attachment A    Financial Summary of Helen Hayes Hospital - March 2014 and 2015  
BFA Attachment B    Financial Summary of Helen Hayes Hospital - August 2015 internals



**Project # 161068-T  
Good Samaritan Hospital Medical Center**

**Program: Hospital  
Purpose: Transitional Care Beds**

**County: Suffolk  
Acknowledged: February 23, 2016**

**Executive Summary**

**Description**

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Good Samaritan Hospital Medical Center (GSHMC), a 437-bed, voluntary not-for-profit, Article 28 acute care hospital located at 1,000 Montauk Highway, West Islip (Suffolk County), requests approval to create a 22-bed Transitional Care Unit (TCU) through the conversion of 22 medical/surgical beds. The TCU unit will be located and self-contained on the third floor of the Hospital.

GSHMC is affiliated with the Catholic Health Services of Long Island (CHSLI) System, an integrated healthcare delivery system comprised of six acute care hospitals, a certified home health agency, three residential health care facilities, a regional home care and hospice network, a durable medical equipment company and Maryhaven Center of Hope, a community-based agency that provides mental health and substance abuse services and care for developmentally disabled adults and children. GSHMC is a partner provider in the Nassau Queens Performing Provider System (PPS) and the State University of New York at Stony Brook University Hospital PPS in the New York State Delivery System Reform Incentive Payment (DSRIP) Program.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

**Program Summary**

GSHMC proposes to create a 22-bed TCU by converting 22 medical/surgical beds to Transitional Care beds and perform requisite renovations. The TCU will re-establish the continuum of care afforded by coordination and integration and further the hospital's efforts to reduce the length of stay, facilitate the hospital's efforts at reducing the number of unnecessary readmissions, and enhance the hospital's capacity to serve the targeted population.

**Financial Summary**

Project costs \$5,318,583 will be met with accumulated funds from Good Samaritan Hospital Medical Center. The projected incremental budget is as follows:

Revenues:	\$4,780,608
Expenses:	<u>3,871,700</u>
Gain:	\$908,908

## 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 NYSE-CON upon mailing. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-04. (AER). These drawings must resolve all issues noted in the request for additional information dated February 29, 2016. [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. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
3. Construction must start on or before January 1, 2017 and construction must be completed by September 15, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

# Need Analysis

## Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

## Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

## Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Background

Good Samaritan Hospital Medical Center (GSHMC), located at 1000 Montauk Highway, West Islip (Suffolk County), is a 437-bed, acute care hospital and provides acute inpatient, critical care and ambulatory services to residents of Suffolk County. GSHMC has NYSDOH designations as an Area Trauma Center, a Level III Perinatal Center, a Stroke Center and a SAFE Center of Excellence. In addition, GSHMC is a major clinical campus of the New York Institute of Technology College of Osteopathic Medicine, as well as a clinical site for other medical schools, offering a multitude of student rotation experiences. GSHMC has AOA accredited, post-graduate residency programs in emergency medicine, family medicine, OB/GYN and pediatrics (which is also ACGME accredited). GSHMC also has a CPME and COTH accredited post-graduate residency program in podiatric surgery. GSHMC received approval from AOA in July 2015 to establish a post-graduate residency program in general surgery, beginning in July 2016. In addition to the New York Institute of Technology College of Osteopathic Medicine, GSHMC has medical training affiliations with the following medical schools: Mount Sinai School of Medicine; Lake Erie College of Osteopathic Medicine; SUNY Stony Brook; and New York College of Podiatric Medicine. GSHMC also has residency training affiliations with Winthrop-University Hospital, Nassau University Medical Center, Jacobi Medical Center, Elmhurst Hospital Center, Mercy Medical Center and St. Charles Hospital.

GSHMC is affiliated with the Catholic Health Services of Long Island (CHSLI) System, an integrated healthcare delivery system comprised of six acute care hospitals, a certified home health agency, three residential health care facilities, a regional home care and hospice network, a durable medical equipment company and Maryhaven Center of Hope, a community-based agency that provides mental health and substance abuse services and care for developmentally disabled adults and children. GSHMC is a partner provider in the Nassau Queens Performing Provider System (PPS) and the State University of New York at Stony Brook University Hospital PPS in the New York State Delivery System Reform Incentive Payment (DSRIP) Program. GSHMC will leverage the collaborative relationships with the other partners in the PPSs to facilitate the development of short- and long-term complex care to patients in the appropriate, least-restrictive environment, including nursing homes and community-based services.

### Program Review

The principal elements of the proposed TCU program are:

- Conversion of 22 medical/surgical beds to be located in a discrete wing of the third floor of the hospital
- Operation of the unit will:
  - reducing the length of stay at the medical/surgical beds;
  - helping to reduce unnecessary hospital readmissions; and
  - enhancing Good Samaritan Hospital's ability to serve the targeted population.
- The patients served will include:
  - The most costly, complex convalescing elders that are clinically stable and would otherwise remain in medical/surgical beds;

- those in need of coordinated multi-level rehabilitation; and
- frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of seven double-bedded rooms and eight single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who, while clinically stable, still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home, as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

In addition, Good Samaritan Hospital has identified: collaborative relationships with community providers including cooperative agreements with three SNFs; a sound strategy for treating patients in the TCU; purposeful discharge policies; adequate staffing to include physician coverage; and a willingness to report clinical and operational data on at least an annual basis as defined by the Department.

Recommendation

**From a programmatic perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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Total Project Costs

Total project costs for renovations and the acquisition of movable equipment are estimated at \$5,318,583, broken down as follows:

Renovation & Demolition	\$ 3,400,000
Site Development	82,500
Asbestos Abatement or Removal	220,000
Design Contingency	340,001
Construction Contingency	340,001
Architect/Engineering Fees	300,000
Construction Manager Fees	125,000
Other Fees (Consultant)	30,000
Movable Equipment	6,800
Application Fee	2,000
Additional Processing Fee	<u>29,081</u>
<b>Total Project Cost</b>	<b><u>\$5,318,583</u></b>

Project costs are based on a construction start date of January 15, 2017, and an eight-month construction period. Good Samaritan Hospital Medical Center will finance total project costs through accumulated funds.

## Operating Budget

The applicant has submitted an incremental operating budget in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,277,386	\$4,780,608
Expenses		
Operating	\$3,286,870	\$3,588,271
Depreciation and Rent	<u>283,429</u>	<u>283,429</u>
Total Expenses	\$3,570,299	\$3,871,700
Net Income	<u>\$707,087</u>	<u>\$908,908</u>
Utilization - Patient Days	6,826	7,629
Cost Per Day	\$523.04	\$507.50

Utilization for the first and third years is 100% Medicare. Expense and utilization assumptions are based on the historical experience of Good Samaritan Hospital Medical Center inpatients.

## Capability and Feasibility

Project cost will be satisfied by accumulated funds from Good Samaritan Hospital Medical Center. BFA Attachment A is the financial summary of the Hospital showing sufficient funds.

Working capital of \$645,283 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$707,087 and \$908,908 during the first and third years of operation, respectively. The Medicare revenues were based on a blend of DRGs associated with GSHMC medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

Good Samaritan Hospital Medical Center maintained a positive net asset position, positive working capital and net income from operations of \$16,284,000 in 2015.

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

## Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary of Good Samaritan Hospital Medical Center - 2015 and 2014
BFA Attachment B	Financial Summary of Catholic Health Services of Long Island - 2013 and 2014



**Project # 161069-T  
Nyack Hospital**

**Program: Hospital  
Purpose: Transitional Care Beds**

**County: Rockland  
Acknowledged: February 23, 2016**

**Executive Summary**

**Description**

This application was submitted in response to the Department’s January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Nyack Hospital (Nyack), a 375-bed, voluntary not-for-profit, Article 28 acute care hospital located at 160 North Midland Avenue, Nyack (Rockland County), requests approval to create a 16-bed Transitional Care Unit (TCU) through the conversion of 16 medical/surgical beds. The TCU unit will be located and self-contained on the fourth floor of the Maze Building (4-Maze Nursing Unit) on the hospital campus.

Nyack provides acute inpatient, critical care and ambulatory services to residents of Rockland County. Nyack also operates Nyack Hospital Home Care Department, a certified home health agency (CHHA) that provides nursing, home health aide, medical social services, occupational therapy, physical therapy, speech-language pathology services, and DME supplies to both long and short-term patients in Rockland County.

Montefiore Health System, Inc. (MHS) is the sole member and passive parent of the hospital. As a member of MHS, Nyack is a partner provider in the Montefiore Hudson Valley Collaborative, a PPS in the DSRIP Program.

Nyack is a vital access provider assurance program (VAPAP) facility. Their VAPAP Transformation Plan submitted to the

Department outlines the initiatives they are undertaking to become more effective and efficient in delivering health care services to the community. The plan, which the Department monitors on an ongoing monthly basis, details their efforts to strengthen primary care, ambulatory care and community-based services consistent with the goals of the DSRIP program. The TCU will allow the Hospital to reduce their excess Medicare days and create cost reductions in inpatient stays in line with their VAPAP Transformation Plan and DSRIP goals.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**  
Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

**Program Summary**  
Approval of a 16-bed TCU at Nyack Hospital will bring intensive post-acute services to MHS. According to the applicant, this will afford MHS the ability to provide, and manage with patients, the continuum of care across varied settings and to have all of the care settings needed to be an effective and efficient ACO. Functioning as an ACO, MHS has the capability of prospectively planning budgets and resource needs for all of the settings within its ACO and is of sufficient size to support comprehensive, valid and reliable performance measurement across the continuum of care.



## Financial Summary

Project costs of \$1,764,440 will be met with a capital lease of \$1,587,996 and \$176,444 in accumulated funds from the Nyack Hospital Foundation. The incremental budget is as follows:

Revenues:	\$3,191,778
Expenses:	<u>2,899,717</u>
Gain:	\$292,061

## 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 NYSE-CON upon mailing. [PMU]
2. Submission of an executed capital lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of documentation, acceptable to the Department of Health, that Nyack Hospital Foundation has provided the equity for the project. [BFA]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. These drawings must resolve all issues noted in the request for additional information dated March, 1 2016. [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. 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]
3. Construction must start on or before September 1, 2016 and construction must be completed by May 31, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

# Need Analysis

## Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

## Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

## Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Background

Nyack Hospital (Nyack) is located at 160 North Midland Avenue, Nyack (Rockland County). Nyack, a 375-bed hospital, provides acute inpatient, critical care and ambulatory services to residents of Rockland County. Nyack has NYSDOH designations as an Area Trauma Center, a Level II Perinatal Center and a Stroke Center, as well as Joint Commission on Accreditation of Healthcare Organization certification as a Joint Replacement – Hip Program and a Joint Replacement – Knee Program. Nyack Hospital also operates a certified home health agency (CHHA), Nyack Hospital Home Care Department, which provides baseline services, home health aide, medical social services, medical supplies equipment and appliances, nursing, occupational therapy, physical therapy and speech language pathology services to both long- and short-term patients in Rockland County.

Montefiore Health System, Inc. (MHS) is the sole member and passive parent of Nyack. As a member of MHS, Nyack is a partner provider in the Montefiore Hudson Valley Collaborative, a performing provider system (PPS) in the New York State Delivery System Reform Incentive Payment (DSRIP) Program. Working with its partner providers of Hudson Valley hospitals, diagnostic and treatment centers, nursing homes, community-based programs and other organizations, the PPS is championing new models of providing individuals with high-quality care, while reducing expenditures through enhanced care coordination, community-focused care and education. Nyack will leverage its collaborative relationships with the other partners in the PPS to facilitate the development of short- and long-term complex care to patients in the appropriate, least-restrictive environment, including RHCs and community-based services.

### Program Review

The principal elements of the proposed TCU program are:

- Conversion of 16 medical/surgical beds to 16 transitional care beds to be located on the 4<sup>th</sup> floor of the Maze Building.
- Operation of the unit will:
  - reduce the length of stay in the medical/surgical beds;
  - help reduce unnecessary hospital readmissions;
  - enhance Nyack Hospital's ability to serve the targeted population.
- The patients to be served include:
  - the most costly, complex convalescing elders that are clinically stable and would otherwise remain in an medical/surgical bed;
  - those in need of coordinated multi-level rehabilitation; and
  - frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of 16 single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who, while clinically stable, still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home, as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

In addition, Nyack Hospital has identified: collaborative relationships with community providers; a defined strategy for treating patients in the TCU; purposeful discharge policies, adequate staffing to include physician coverage, and committed to reporting required statistics to the Department on an annual basis.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Costs

Total project costs for renovations and the acquisition of movable equipment are estimated at \$1,764,440, broken down as follows:

Renovation & Demolition	\$1,070,196
Design Contingency	107,020
Construction Contingency	107,020
Architect/Engineering Fees	85,563
Other Fees (Consultant)	25,000
Movable Equipment	358,000
Application Fee	2,000
Additional Processing Fee	<u>9,641</u>
Total Project Cost	<u>\$1,764,440</u>

Project costs are based on a construction start date of September 1, 2016 and a nine-month construction period. Nyack Hospital will finance total project costs as follows:

Accumulated funds from the Foundation	\$176,444
Capital Lease (60 months, 1.962%)	\$1,587,996

The accumulated funds are from the Nyack Hospital Foundation. The Foundation has submitted a letter stating that they are willing to provide the necessary funds for this project. BFA attachment C shows that Nyack Hospital Foundation has sufficient equity.

The Capital Lease is for related construction and movable equipment. A draft lease proposal has been submitted by the applicant from Pantheon Capital for a 60-month period at a monthly lease rate factor of .01962. BFA Attachment B shows the net present value of the lease payments over the 60 months (5-year term).

## Operating Budgets

The applicant has submitted an incremental operating budget in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,023,790	\$3,191,778
Expenses		
Operating	\$2,708,053	\$2,719,441
Capital	<u>196,390</u>	<u>180,276</u>
Total Expenses	\$2,904,443	\$2,899,717
Net Income	<u>\$119,347</u>	<u>\$292,061</u>
Utilization - Patient Days	5,256	5,548
Cost Per Day	\$552.60	\$522.66

Utilization for the first and third years is 100% Medicare. Expense and utilization assumptions are based on the historical experience of Nyack Hospital inpatients.

## Capability and Feasibility

Project costs of \$1,764,440 will be met with a capital lease of \$1,587,996 and \$176,444 in accumulated funds from the Nyack Hospital Foundation. BFA Attachment C presents the financial summary of the Foundation showing sufficient funds.

Working capital of \$483,286 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$119,347 and \$292,061 during the first and third years of operation, respectively. The Medicare revenues were based on a blend of DRGs associated with NH medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

Nyack Hospital experienced negative working capital, maintained a positive net asset position, and net loss from operations of \$2,206,736 as of November 31, 2015. The applicant indicated that the negative working capital and net operating losses are due to the following facts:

- Nyack Hospital is a safety net provider with a high percentage of Medicaid, uninsured and Medicaid dual-eligible patients. Declines in Medicaid reimbursement and volume changes had a negative impact on net patient revenues, which contributed to the Hospital's net operating losses. BFA Attachment D is Nyack Hospital's 2014-2015 statistical report, which supports that their payor mix is predominantly governmental payors. The facility's Medicaid and uninsured discharges accounted for 40% of all discharges in 2015, which was up from 36% all discharges in 2014.
- Nyack Hospital has been working on reducing their working capital deficit by cost savings and increasing patient revenues. As shown on their 2014 -2015 financials, the working capital deficit has been reduced by \$2,623,505.

Based on preceding and 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.**

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## Attachments

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BFA Attachment A	Financial Summary of Nyack Hospital- December 31, 2014
BFA Attachment B	Financial Summary of Nyack Hospital- November 30, 2015 internals
BFA Attachment C	Financial Summary of Nyack Hospital Foundation-2015 internals
BFA Attachment D	Nyack Hospital Statistical Report



**Project # 152356-E  
Advanced Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Rockland  
**Purpose:** Establishment    **Acknowledged:** December 16, 2015

**Executive Summary**

**Description**

Advanced Surgery Center, LLC d/b/a Advanced Surgery Center, an existing proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 150 South Pearl Street, Pearl River (Rockland County), requests approval for a two-year extension of their limited life. The Center is certified as a dual single-specialty FASC specializing in plastic surgery and ophthalmology services. The FASC was approved by the Public Health Council with a five-year limited life and began operating effective June 14, 2010.

The applicant is not proposing to add or change any services, or expand or renovate the facility in this application.

**OPCHSM Recommendation**

Contingent Approval of a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

**Need Summary**

Data submission by the applicant, as a contingency of CON 091059, is complete.

Based on CON 091059, Advanced Surgery Center projected Medicaid to be 2.0 percent and charity care at 3.0 percent for Year 3. According to AHCF cost reports, actual charity care and Medicaid in Year 3 (2013) was 0 percent, However, approval of the center's Medicaid certification was not granted until November 2013.

Upon approval of this CON, Advanced Surgery Center projects 411 procedures in Year 1, with 2.2 percent Medicaid and 3.2 percent charity care.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application. The projected budget is as follows:

Revenues	\$1,766,023
Expenses	<u>814,288</u>
Net Income	\$951,785



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval of a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide quarterly reports to DOH following the completion of each quarter of operation. Reports will be due within 60 days of the conclusion of each quarter as identified by the Effective Date on the Operating Certificate issued at project completion. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

**Approval conditional upon:**

1. The project must be completed within three months 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 quarterly reports to the Department, as prescribed by the related contingency, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

**April 14, 2016**

## Need Analysis

### Analysis

The primary service area is Rockland County. The applicant had projected 573 procedures for Year 3 of the original CON 091059, but performed only 211.

The table below provides a projected and actual breakdown of procedures by payor, as well as projections for the first year after approval of the current CON.

	<b>091059 Projected Year 3 (2013)</b>	<b>091059 2013 Actual</b>	<b>2014 Actual</b>	<b>152356 Projected (Year 1)</b>
Medicare FFS/MC	14.0%	5.2%	6.1%	5.8%
Medicaid FFS/MC	2.0%	0.0%	.5%	2.2%
Commercial	30.0%	94.8%	41.1%	39.4%
Private Pay/Other	51.0%	0.0%	51.3%	49.4%
Charity Care	3.0%	0.0%	1.0%	3.2%
Total	100%	100%	100%	100%

Source: Applicants' annual reports

Per the FASC's establishment CON, Medicaid and Charity Care were projected to be 2% and 3%, respectively, of total procedures in the first and third years of operation. The applicant acknowledges the annual Medicaid and Charity Care utilization combined has been consistently below 1% and recognizes that the Center has not reached a desirable level of care to underserved populations during the initial five-year limited life. The applicant indicated the facility struggled for three years to secure a Medicaid provider number, which significantly hampered its ability to provide care to Medicaid patients. Staff verified that a request for Medicaid enrollment was received by the Department on November 11, 2010, and that the Department notified the Center of their enrollment confirmation (retroactive to June 14, 2010) via a letter dated November 15, 2013. Due to the delay, the applicant indicated that the Center has been actively pursuing Medicaid referrals for only two (2) years and was only recently able to complete the Medicaid managed care plan contracting process that began after it received its Medicaid provider number.

The applicant indicated that the FASC provided only plastic surgery services throughout its limited life, with only one surgeon performing the plastic surgery procedures. Although the Center was approved to add ophthalmology effective February 11, 2014, the service has not been fully implemented. The Center projects 50 ophthalmology procedures in Year One and 75 in Year Three, and anticipates that this service will enhance the Center's ability to attract and care for Medicaid and Charity Care patients. Advanced Surgery Center, LLC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

To improve their efforts in reaching the underserved, the applicant has proposed the following:

- The Center has secured Medicaid managed care contracts with Fidelis Care Plan, Affinity Health Plan and Hudson Health Plan.
- The Center reaches out on a regular basis to Nyack Hospital and Good Samaritan Hospital in an effort to obtain reconstructive surgery and ophthalmology Medicaid and Charity Care referrals from the hospitals' emergency departments. Copies of the outreach letters have been provided as documentation.
- The center will be meeting with Refuah Health Center, a Federally Qualified Health Center (FQHC), in an effort to increase additional underinsured patient referrals to the center.

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional charity care. The delay this center faced in being certified for Medicaid until November 2013 prevented the center from serving this population of patients. The center has increased their Medicaid utilization to 1.75 percent in 2015. The center also added a surgeon to provide ophthalmology services, in February 2014. Based upon these circumstances, approval for an additional two years of limited life is recommended.

#### Conclusion

Extending the limited life will allow the applicant additional time to reach the underserved population in the communities of Rockland County.

#### Recommendation

**From a need perspective, contingent approval is recommended, with a two year extension of their operating certificate.**

## Program Analysis

#### Program Proposal

Advanced Surgery Center, LLC, an existing Article 28 multi-specialty diagnostic and treatment center certified as a dual single-specialty freestanding ambulatory surgical center, located at 150 South Pearl Street in Pearl River (Rockland County), requests permission for a two year extension of their operating certificate (initially granted via CON #091059B).

The Center, accredited by The Accreditation Association for Ambulatory Health Care (AAAHC), provides surgical services in the areas of plastic surgery and ophthalmology through the use of one procedure room. At the present time, there are no proposals to add any services, expand or renovate the facility or change anything about the Center.

#### 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.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted their current year (2014) and their first and third years operating budgets subsequent to approval (inclusive of ophthalmology services), in 2016 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:			
Medicaid MC	\$4,264	\$38,375	\$38,375
Medicare FFS	102,333	142,333	162,333
Commercial FFS	690,748	695,748	698,248
Private Pay	12,792	15,292	14,292
Self- Pay	<u>852,775</u>	<u>852,775</u>	<u>852,775</u>
Total Revenues	\$1,662,912	\$1,744,823	\$1,766,023
Expenses:			
Operating	\$594,245	\$615,365	\$621,626
Capital	<u>192,612</u>	<u>192,612</u>	<u>192,612</u>
Total Expenses	\$786,857	\$807,977	\$814,288
Net Income	<u>\$876,055</u>	<u>\$936,846</u>	<u>\$951,785</u>
Utilization (Procedures)	394	461	486
Cost Per Procedure	\$1,997.10	\$1,752.66	\$1,675.39

Utilization by payor related to the submitted operating budget is as follows:

	<u>Current Year (2014)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid MC	1	0.25%	9	1.95%	10	2.06%
Medicare FFS	24	6.09%	64	13.88%	84	17.28%
Commercial FFS	162	41.12%	167	36.23%	170	34.98%
Private Pay	3	0.76%	6	1.30%	5	1.03%
Self-Pay	200	50.76%	200	43.38%	200	41.15%
Charity Care	<u>4</u>	<u>1.02%</u>	<u>15</u>	<u>3.26%</u>	<u>17</u>	<u>3.50%</u>
Total	394	100%	461	100%	486	100%

### Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate a net income of \$936,846 and \$951,785 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is the 2014 certified financial statements of Advanced Surgery Center. As shown, the entity had a positive working capital position and a positive net asset position in 2014. Also, the entity achieved a net income of \$876,055.

BFA Attachment B is the internal financial statements of Advanced Surgery Center as of September 30, 2015. As shown, the entity had a positive working capital position and a positive net asset position and achieved a net income of \$243,173 through September 30, 2015.

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

### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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- BFA Attachment A Financial Summary - 2014 certified financial statements of Advanced Surgery Center
- BFA Attachment B Financial Summary - internal financial statements of Advanced Surgery Center as of September 30, 2015



**Project # 152289-E**  
**Digestive Disease Center of Central New York, LLC**

**Program:** Diagnostic and Treatment Center      **County:** Onondaga  
**Purpose:** Establishment      **Acknowledged:** November 18, 2015

**Executive Summary**

**Description**

Digestive Disease Center of Central New York, LLC, an existing New York limited liability company that operates an Article 28 freestanding ambulatory surgery center (FASC) at 5100 West Taft Road, Liverpool (Onondaga County), requests approval to modify ownership of the Center by the withdrawal of one physician member and the addition of another, to maintain a total of three members. There will be no change in services.

Membership interest after the requested change is as follows:

<u>Proposed</u>	
Thomas Romano, MD.	37.5%
Borys Buniak, MD.	37.5%
Sara Mitchell, MD.	25.0%

**OPCHSM Recommendation**  
**Approval**

**Need Summary**

There will be no Need review for this project.

**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**

The purchase price for the 25% ownership interests is \$500,000 and has been paid in full. No budget analysis was necessary as this is a 25% change in membership, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

1. The project must be completed within one year 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

**April 14, 2016**

## Program Analysis

### Project Proposal

Digestive Disease Center of Central New York, LLC, an existing Article 28 single specialty ambulatory surgery center specializing in gastroenterological procedures, requests approval for the withdrawal of one physician member and the addition of a new physician member to maintain a total of three members. Other than the proposed changes in membership, there are no programmatic changes as a result of this request.

### Character and Competence

The proposed new member is Sara H. Mitchell, MD. The following table details the proposed change in ownership:

<b>Member Name</b>	<b>Membership Interest Proposed by this Application</b>
Borys Buniak, M.D.	37.50%
Thomas Romano, M.D.	37.50%
Robert Epstein, M.D.	----
<b>Sara H. Mitchell, M.D. **</b>	25.0%

**\*\*Subject to Character & Competence Review**

The new proposed individual member, Sara H. Mitchell, M.D., is a practicing, board-certified Internist who completed a three year fellowship in gastroenterology and has over ten years of experience. She is currently on the staff at Digestive Disease Center of Central New York and plans to continue to perform approximately 1,800 procedures annually

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.

*Dr. Mitchell disclosed that she has one pending malpractice case.*

### Recommendation

**From a programmatic perspective, approval is recommended.**



## Financial Analysis

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement, as summarized below:

Date:	December 10, 2015
Company/Seller:	Digestive Center of Central New York, LLC members: Thomas Romano, MD and Borys Buniak, MD
Buyer:	Sara Howe Mitchell, MD
Purpose:	Purchase of 25 units of membership interests of the Company
Purchase Price:	\$500,000
Payment of Purchase Price:	In consideration for the membership interest, the Buyer has already paid the full purchase price in 2014.

### Capability and Feasibility

The purchase price for the 25% ownership interests is \$500,000 and has been paid in full. BFA Attachment A is the personal net worth statement of Sara Mitchell, M.D., which indicates the availability of funds to pay the purchase price in full.

No budget analysis is necessary as this is a 25% change in membership, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

BFA Attachment B is the 2012 through 2014 certified financial statements of Digestive Center of Central New York, LLC. As shown, the entity achieved an average positive working capital position and an average positive net asset position from 2012 through 2014. Also, the entity achieved an average net income of \$2,464,856 from 2012 through 2014.

BFA Attachment C is the November 30, 2015 internal financial statements (cash basis) for Digestive Center of Central New York, LLC. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2015. Also, the entity achieved a net income of \$2,717,817 through November 30, 2015.

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

### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Personal net worth statement of new member
BFA Attachment B	Financial Summary - 2012 through 2014 certified financial statements of Digestive Center of Central New York, LLC
BFA Attachment C	Financial Summary – November 30, 2015 internal financial statements of Digestive Disease Center of Central New York, LLC



**Project # 161009-B  
Star Surgical Suites**

**Program:** Diagnostic and Treatment Center      **County:** Nassau  
**Purpose:** Establishment and Construction      **Acknowledged:** January 11, 2016

**Executive Summary**

**Description**

Star Suites, LLC, a New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC). The FASC will be certified as a single-specialty FASC specializing in gastroenterology services. The facility will be housed in 11,900 square feet of leased space in an existing building located at 623 Stewart Avenue, Garden City (Nassau County). The FASC will include four procedure rooms, a pre-operating area, eight recovery bays, and requisite support areas. Upon approval, the FASC will be named Star Surgical Suites, LLC.

The proposed members of Star Suites, LLC and their ownership percentages are as follows:

Star Suites, LLC	
Members	%
Sridevi Bhumi, MD	36.50%
Christopher Demetriou, MD	36.50%
Steven Rubin, MD	17.00%
Frontier Health Associates, LLC	10.00%

Frontier Health Associates, LLC is owned by Jordan Fowler (39.00%), Dr. Oleg Gutnik (29.25%), Roy Bejarano (29.25%) and Jason Schifman (2.50%).

Frontier Health Associates, LLC has ownership interest in ten New York State FASC facilities. BFA Attachments C and D present the ownership interests and financial summaries, respectively, of the proposed members affiliated FASCs.

**OPCHSM Recommendation**

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

**Need Summary**

The procedures to be performed at the FASC are presently being performed in physicians' private offices. The applicant projects 3,900 procedures in Year 1, with Medicaid at 3.2% 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**

Total project costs of \$4,605,260 will be met through members' equity of \$460,525 with the remaining balance of \$4,144,735 to be financed through two bank loans as follows: \$2,744,735 over 5 years at 5% interest for leasehold improvements, and \$1,400,000 over 5 years at 4.5% interest for moveable equipment. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,644,864	\$3,718,815
Expenses	<u>\$2,662,316</u>	<u>\$2,633,943</u>
Net Income/(Loss)	\$982,548	\$1,084,872

## 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 is recommended, contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed billing services agreement, acceptable to the Department of Health. [BFA]
7. 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]
8. 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]
9. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans.[RNR]
10. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
11. Submission of an executed Business Associate Agreement, acceptable to the Department. [HSP]
12. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

13. Submission of a photocopy of an amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's amended and completed Articles of Organization, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of completed and executed Articles of Organization and Operating Agreement of Frontier Healthcare Associates, LLC, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Billing Services Agreement of the applicant and completed Exhibit A- Business Associate 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 annual reports to the Department, as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
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, 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 June 1, 2016 and construction must be completed by December 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

## Need Analysis

### Project Description

Star Suites, LLC is seeking approval to establish and construct a freestanding ambulatory surgery center providing single specialty gastroenterology surgery services to be located at 623 Stewart Avenue, Garden City, 11530, in Nassau County. Upon approval, Star Suites, LLC will change its name to Star Surgical Suites, LLC.

### Analysis

The service area of Nassau County has a total of nine freestanding ambulatory surgery centers: five multi-specialty and four single-specialty. The table below shows the number of patient visits at ambulatory surgery centers in Nassau County for 2013 and 2014.

ASC Type	Facility Name	Total Patients 2013	Total Patients 2014
Multi	Day OP of North Nassau Inc	654	149
Multi	Day-OP Center of Long Island Inc	3,952	3,259
Single	Endoscopy Center of Long Island, LLC	7,141	7,981
Multi	Garden City Surgi Center	5,870	6,035
Single	Island Eye Surgicenter LLC	10,396	10,269
Single	Long Island Center for Digestive Health, LLC	5,772	6,020
Single	Meadowbrook Endoscopy Center	6,617	7,702
Multi	Pro Health Ambulatory Surgery Center, Inc	6,595	12,325
Multi	South Shore Ambulatory Surgery Center, LLC	5,537	4,646
Total		52,534	58,386

(Source: SPARCS-2015)

There was an 11.1% year-to-year increase in the number of patients served by ambulatory surgery centers. For the single gastroenterology specialty ASCs, the number of patient visits was 19,530 in 2013 and 21,703 in 2014, also an 11.1% year-to-year increase.

The applicant projects 3,900 procedures in Year 1 and 3,978 in Year 3 based on the current practices of participating surgeons. The table below shows projected utilization by payor source for Year 1 and Year 3.

	Year 1 Volume	Year 1 %	Year 3 Volume	Year 3 %
Commercial Ins	2,968	76.1%	3,027	76.1%
Medicare	730	18.7%	744	18.7%
Medicaid	125	3.2%	127	3.2%
Private Pay	0	0.0%	0	0.0%
Charity Care	77	2.0%	80	2.0%
Total	3,900	100.0%	3,978	100.0%

The Center has stated that it intends to obtain contracts with the following Medicaid Managed Care plans: Healthfirst and Fidelis.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. The Center will seek to partner with local community organizations and FQHC's that can refer qualified uninsured patients to the Center. The Center has an Administrative Service agreement with Frontier Healthcare Management. Frontier has partnerships with several organizations that include the following FQHC's: Community Health Network, Charles B. Wang Center, and Hudson Health Care. Frontier Healthcare Management will assist the Center in establishing relationships with these organizations in order to develop referrals for underinsured patients to be treated at the proposed Center.

## Conclusion

Approval of this project will bring office-based surgical procedures into an Article 28 regulated setting serving the same community.

## Recommendation

**From a need perspective, contingent approval is recommended.**

# Program Analysis

## Project Proposal

Star Suites, LLC seeks approval to establish and construct a single-specialty ambulatory surgery center (ASC) specializing in gastroenterological procedures at 623 Stewart Avenue in Garden City (Nassau County). Upon approval, the ASC will be known as Star Surgical Suites, LLC.

This project consolidates the participating physicians' three separate, office-based surgical practices into a single, regulated Article 28 location, thus providing a measure of compliance with the latest standards of safe health care delivery at a location that is convenient and accessible for the surrounding community.

<b>Proposed Operator</b>	Star Suites, LLC
<b>Doing Business As</b>	Star Surgical Suites, LLC
<b>Site Address</b>	623 Stewart Avenue Garden City New York 11530 (Nassau County)
<b>Surgical Specialties</b>	Single Specialty: Gastroenterology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	4 (Class A)
<b>Hours of Operation</b>	Monday through Friday from 7:00 a.m. to 5:00 p.m. (Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	16.5 FTEs / 16.5 FTEs
<b>Medical Director(s)</b>	Christopher Demetriou, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by South Nassau Communities Hospital 6.2 miles / 20 minutes
<b>On-call service</b>	24/7 service to immediately refer the patient to the Center's on-call physician.

## Character and Competence

The members of the LLC are:

<b>Name</b>	<b>Membership</b>
<b>Individual Physician Members</b>	<b>90%</b>
Sridevi Bhumi, M.D. (36.50%)	
Christopher Demetriou, M.D. (36.50%), <i>Medical Director</i>	
Steven Rubin, M.D. (17.00%)	
<b>Frontier Healthcare Associates, LLC</b>	<b>10%</b>
Jordan Fowler (39.00%)	
Oleg Gutnik, M.D. (29.25%)	
Roy Bejarano (29.25%)	
Jason Schifman (2.5%)	

Three individual physician members, each of whom are practicing surgeons, board-certified in gastroenterology, hold a 90% membership interest. The remaining 10% membership interest is held by Frontier Healthcare Associates, LLC, an ambulatory endoscopy center development and management company comprised of four individual members.

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.

*Frontier Healthcare Associates, LLC has disclosed membership interest in Yorkville Endoscopy. On September 10, 2015, the Department issued a Stipulation and Order and \$16,000 fine to Yorkville Endoscopy, LLC based on Federal non-compliance identified in a Statement of Deficiencies issued by the Centers for Medicare and Medicaid (CMS) on October 10, 2014 and violations of Article 28 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR) which the Department discovered during inspections conducted in May 2015. Specifically, deficient practice was identified in the following areas: Organization and Administration (Operator); Medical Record System; Patients' Rights; Surgery Services; and Anesthesia Services. As a result of this enforcement, the facility has been directed to submit semi-annual reports for a one year period (or until the Department determines full compliance has been achieved with every item required). Reporting requirements include (but are not limited to): quality assessment and performance improvement minutes and audits, complaint logs, and patient discharge/transfer data.*

#### Integration with Community Resources

The Center plans to work closely with its patients to educate them on the availability of primary care services offered by local providers, including the broad array of services offered by South Nassau Communities Hospital (the Center's back-up hospital). A formal outreach program will be developed to inform members of the local community, including local physicians, of the services available and benefits derived from outpatient gastroenterology treatment.

The Center plans on utilizing an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification. In addition, patients will be treated on the basis of need for gastroenterology procedures, without discrimination due to ability to pay. The Center will use a sliding fee scale and is committed to providing care for those who are uninsured or unable to pay.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Lease Rental Agreement

The applicant submitted a draft lease for the proposed site, as summarized below:

Premises:	Approximately 11,900 gross square feet in an existing building located at 623 Stewart Avenue, Garden City , (Nassau County), NY
Landlord:	SiriShield, LLC.
Lessee:	Star Suites, LLC.
Term:	15 years with two (2) five- year renewal options
Rental:	\$357,000 annually (\$29,750 /month or \$30 per sq. ft.) with a 1% annual rate increase
Provisions:	Triple Net Lease, lessee pays all fees associated with the leased asset

SiriShield, LLC is owned by three proposed Star Suites, LLC members—Dr. Christopher Demetriou (33.34%), Dr. Sridevi Bhumi (33.33%) and Dr. Steven Rubin (33.33%). The applicant provided an affidavit stating that, in terms of economic relationship, the lease will be treated as an arm's length arrangement. However, the Department deems the lease agreement to be non-arm's length. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

### Administrative Services Agreement

The applicant submitted a draft Administrative Services Agreement with Frontier Healthcare Management Services, LLC, summarized below:

Facility/Operator:	Star Suites, LLC.
Administrator:	Frontier Healthcare Management Services, LLC.
Administrator Fee:	\$130,000 annual fee with a 1.5% annual increase
Term:	2 years with unlimited automatic (1) year renewals.
Service Provided:	All administrative services as detailed in the administrative services agreement, which includes: staffing/scheduling; accounting; ordering/purchasing; compliance with policies and procedures, and medical staff By-laws/rules; medical staff application and credentialing; accreditation; physical plant/materials management; nursing and administration.

While Frontier Healthcare Management Services, LLC will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

There is a common ownership between one of the applicant members and the administrative service agreement provider. Frontier Healthcare Management Services, LLC is a wholly owned subsidiary of Frontier Health Associates, LLC.

### Billing Services Agreement

The applicant submitted a draft Billing Services Agreement with Frontier Healthcare Billing Services, LLC, summarized below:

Facility/Operator:	Star Suites, LLC.
Administrator:	Frontier Healthcare Billing Services, LLC.
Billing Fee:	\$22.50 per technical and professional claim processed with an annual cost of living increase of 1.5%
Term:	2 years with unlimited automatic one-year renewals.
Service Provided:	Claims processing and accounts receivable management services



While Frontier Healthcare Billing Services, LLC. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations. There is a common ownership between one of the applicant members and the billing service agreement provider. Frontier Healthcare Billing Services, LLC is a wholly owned subsidiary of Frontier Health Associates, LLC.

#### Total Project Cost and Financing

Total project costs, estimated at \$4,605,260, are broken down as follows:

Renovation & Demolition	\$2,079,085
Design Contingency	\$207,908
Construction Contingency	207,908
Architect/Engineering Fees	104,000
Construction Manager Fees	52,000
Other Fees	384,831
Movable Equipment	1,456,000
Interim Interest Expense	86,349
CON Application Fee	2,000
CON Processing Fee	<u>25,179</u>
Total Project Cost	\$4,605,260

Project costs are based on a start date of June 1, 2016, with a six-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$460,525
Bank Loan for Leasehold Improvements (5% for a 5-year term)	\$2,744,735
Bank Loan for M/E (4.50% for a 5-year term)	<u>\$1,400,000</u>
Total	\$4,605,260

JP Morgan Chase Bank has provided a letter of interest for both loans at the stated terms.

#### Operating Budget

The applicant has submitted their first and third year operating budgets, in 2016 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues				
Medicaid	\$677.65	\$132,141	\$677.31	\$134,784
Medicare	\$778.55	\$568,338	\$779.17	\$579,704
Commercial	\$1,016.01	<u>\$2,944,385</u>	\$1,016.35	<u>\$3,004,327</u>
Total Revenues		\$3,644,864		\$3,718,815
Expenses				
Operating	\$404.83	\$1,578,834	\$409.31	\$1,628,225
Capital	<u>\$277.82</u>	<u>\$1,083,482</u>	<u>\$252.82</u>	<u>\$1,005,718</u>
Total Expenses	\$682.65	\$2,662,316	\$662.13	\$2,633,943
Net Income or (Loss)		<u>\$982,548</u>		<u>\$1,084,872</u>
Utilization (procedures)		3,900		3,978

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid	5.00%	5.00%
Medicare	18.72%	18.70%
Commercial	74.31%	74.31%
Charity	<u>1.97%</u>	<u>1.99%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region. The applicant indicated that they are committed to serving all persons in need of surgical care without regard to ability to pay or other personal characteristics. They have submitted their Charity Care Program documenting their intent to partner with local community agencies and various FQHCs to market the Center's Charity Care Program, and to establish contracts with Medicaid Managed Care Plans
- Utilization projections are based on the current caseloads of Drs. Bhumi, Demetriou and Rubin who are board-certified gastroenterologists. The applicant indicated that none of the projected procedures would come from any hospital. The procedures are currently being performed in the physicians' private office-based practices, which are located in the same community that the FASC will serve. Each physician has submitted letters in support of their utilization projections.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of the participating physicians, as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven point is approximately 73.05% of the projected utilization or 2,849 procedures in year one, and 78.84% or 2,818 procedures in year three.

The budgets are reasonable.

#### Capability and Feasibility

The total project cost of \$4,605,260 will be satisfied by the proposed members' equity contribution of \$460,525 with the balance of \$4,144,735 to be financed at the above stated terms.

Working capital requirement is estimated at \$438,080 based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase to finance \$219,040 of the working capital with loan for a 5-year term at an estimated 4% interest rate. The remaining \$219,040 will be provided from the proposed members' own financial resources. BFA Attachment A is the net worth statements of the applicant members, which indicates sufficient liquid resources to meet the equity and working capital requirements. BFA Attachment B is Star Suites, LLC's pro-forma balance sheet that shows operations will start with \$679,566 in equity.

Star Suites, LLC projects net income of \$982,548 and \$1,084,872 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected reimbursement rates for the respective payors. The payment rates for commercial payors were estimated at 150% of the Medicaid case rate. The budgets are reasonable.

The applicant recognizes the need to address the eventual change over to Managed Care Organizations. They are not yet in a position to execute and negotiate contracts or letters of intent with MCOs at this time, but plan on contracting with Affinity Health Plans and Healthfirst, upon approval of this application.

BFA Attachment D is the financial summaries of the proposed members' affiliated D&TCs, which shows the facilities have maintained an average positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of Long Island Digestive Endoscopy Center. Long Island Digestive had a negative working capital position due to the financial statements being presented on a cash basis, which excluded the Accounts Receivable of \$3,089,989. Including the Accounts Receivable, the facility would have had a positive working capital position.

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	Personal Net Worth Statement of Proposed Members of Star Suites, LLC
BFA Attachment B	Pro Forma Balance Sheet of Star Suites, LLC
BFA Attachment C	Frontier Health Associates ownership interest in other NYS FASC facilities
BFA Attachment D	2013-2014 Certified and 2015 internal financial statements for affiliated NYS FASC facilities.



**Project # 161001-B  
Northern Medical Center, Inc.**

**Program:** Diagnostic and Treatment Center    **County:** Orange  
**Purpose:** Establishment and Construction    **Acknowledged:** January 12, 2016

**Executive Summary**

**Description**

Northern Medical Center, Inc. (NMC), an existing not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located in leased space at 14 Jason Place, Middletown (Orange County). The D&TC will occupy approximately 10,000 square feet of space on one floor of the building.

The applicant intends to provide internal medicine, family medicine, pediatrics, physical therapy, psychiatry, acupuncture, herbal medicine, and integrative medicine. The stated purpose of the D&TC is to provide culturally and linguistically sensitive primary care services through innovative approaches that treat the entire person utilizing best practices from allopathic medicine, traditional Chinese Medicine and other integrative approaches.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Proposed services to be certified are: Medical Services-Primary Care, Medical Services-Other Medical Specialties and Dental Services. The applicant projects 4,901 visits for Year 1.

**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 \$1,647,823 will be met as follows: Fundraising of \$108,522 and Equity of \$1,539,301 via the landlord. The projected budget is as follows:

Revenues	\$3,442,169
Expenses	<u>3,217,850</u>
Excess of Revenues over Expenses	\$224,319

## 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 documentation of contributions to be used as the source of financing, acceptable to the Department. [BFA]
3. Submission of an executed building lease acceptable, to the Department. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
6. Submission of proof of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Board Resolution adopting the applicant's bylaws, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed and amended bylaws, acceptable to the Department. [CSL]
9. Submission of the applicant's updated organizational chart, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Medical Director's agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's Administrative Service 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 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 May 1, 2016 and construction must be completed by November 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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

**April 14, 2016**

# Need Analysis

## Background and Analysis

The primary service area of the proposed facility encompasses Middletown, Otisville and Cuddebackville in Orange County, which includes the zip codes of 10940, 10963 and 12729. The secondary service area includes all of Orange County. The population of Orange County in 2010 was 372,813. Per projection data from the Cornell Program on Applied Demographics, the population of Orange County is estimated to grow to 413,327 by the year 2025.

The Middletown Service Area is designated a Medically Underserved Area/Population (Source-HRSA):

## 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.

The table below shows that the PQI rates are significantly higher for the service area than for New York State as a whole.

## Hospital Admissions per 100,000 Adults for Selected PQIs

PQI Rates-2014	Service Area <sup>1</sup>	New York State
All	2,216	1,387

Source: DOH Health Data, 2015

<sup>1</sup> Includes zip codes: 10940, 10963 and 12729

The number of projected visits is 4,901 for Year 1 and 18,859 for Year 3.

The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

## Conclusion

Approval of this project will provide additional access to primary care services, dental and specialty medical services to Middletown and the surrounding communities of Orange County.

## Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Project Proposal

Northern Medical Center, Inc. (NMC) requests approval to establish and construct a not-for-profit Article 28 diagnostic and treatment center at 14 Jason Place in Middletown (Orange County).

NMC intends to provide culturally and linguistically sensitive primary care medicine through innovative approaches that treat the entire person and utilize the best practices from allopathic medicine, as well as from traditional Chinese medicine and other integrative approaches. The facility will offer internal and pediatric medicine, physical therapy, acupuncture and herbal medicine, psychiatry, and integrative medicine. Additionally, NMC plans to offer education programs on health promotion and disease prevention to the local community.

<b>Proposed Operator</b>	Northern Medical Center, Inc.
<b>Site Address</b>	14 Jason Place Middletown, NY (Orange County)
<b>Services</b>	Medical Services – Primary Medical Medical Services – Other Medical Specialty Dental
<b>Hours of Operation</b>	Monday 1 pm – 5 pm, and earlier by appointment Tuesday through Thursday 9 am to 7 pm Friday 9 am – 5 pm Saturday 9 am – 1 pm, and later by appointment
<b>Staffing (1<sup>st</sup>/ 3<sup>rd</sup> Year)</b>	10.2 FTEs / 26.4 FTEs
<b>Medical Director(s)</b>	Damon J. Noto, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Orange Regional Medical Center 5 miles/ 15 minutes away

## Character and Competence

The proposed initial Board of Directors for Northern Medical Center is:

### Name

Yiyuan Joseph Zhao, PhD  
Viviana Galli, MD  
Cynthia Z. Liu, MD

Y. Joseph Zhao, PhD, is the Senior Vice President of Fei Tian College. He received his PhD from Stanford University in 1989 and was a tenured full professor at the University of Minnesota before joining Fei Tian College in 2012, where he now serves as Senior Vice President. In that role, his responsibilities include obtaining accreditation for the college, strategic planning and fundraising. The experience and skills honed in that position share many similarities with the process for healthcare facility accreditation. Prior to his current administrative position, Dr. Zhao specialized in computer modeling of dynamic systems, optimization of system operations, and data analysis. Dr. Zhao also has extensive experience in the operations of non-profit organizations.

Viviana Galli, MD, is a board-certified psychiatrist with more than 20 years of experience in child, adolescent, adult, and adult substance abuse in university, military, and community health settings. Dr. Galli obtained her MD degree from the University of Buenos Aires, Facultad de Medicina in 1980. Dr. Galli has served as the Medical Director of Outpatient Drug and Alcohol Services at the Blanchfield Army Community Hospital, Ft. Campbell, and Medical Director of the Inpatient Mental Health Unit and New Directions at the Bon Secours Community Hospital. Dr. Galli is also a certified acupuncturist and holds a Suboxone certificate. Currently, she practices child, adolescent, and adult psychiatry for the Orange County Mental Health Clinic in Port Jervis, NY.

Cynthia Z. Liu, MD, PhD, is a board certified pathologist, and has been the Assistant Director of the Hematopathology and Molecular Pathology Laboratories at New York University (NYU) Langone Medical Center since 2004, in charge of daily operations. Previously, Dr. Liu served as the Director of Flow Cytometry Laboratory at Bellevue Hospital Center. Since September 2011, she has been the Director of Hematopathology Fellowship, in the Department of Pathology at Langone Medical Center, where she played a leading role in obtaining program accreditation. For the past six years, she has been the primary person responsible for NYU Hematopathology Quality Assurance. Additionally, since June 2015, she has served as the Medical Director of NeoGenomics Laboratories in Kingston, New York.

Disclosure information was similarly submitted and reviewed for the Medical Director, Damon J. Noto, MD. Dr. Noto will also serve as the Administrator of the Center. Dr. Noto is a practicing physician who was educated at the Mount Sinai School of Medicine and completed a completed a Spine and Joint Fellowship at New England Baptist Hospital. He is dually board certified in Pain Medicine and Physical Medicine and Rehabilitation and has owned and managed a private practice, The Spine and Joint Center, in Hackensack, New Jersey for over eight (8) years. Dr. Noto's advanced studies include anti-aging medicine, nutrition, exercise and training in acupuncture and traditional Chinese medicine. Dr. Noto disclosed one open 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.

**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:	10,000 square feet located at 14 Jason Place, Middletown, New York.
Lessor:	Fei Tian College
Lessee:	Northern Medical Center, Inc.
Term:	5 years with a one five-year renewal option, plus one additional five-year renewal option
Rental:	\$120,000 (\$12.00 per sq. ft.) in year one with a 3% increase each year thereafter
Provisions:	The lessee shall be responsible for utilities, real estate taxes and maintenance

The applicant has submitted an affidavit indicating that the lease arrangement will be a non-arm's length lease arrangement. The landlord and the tenant have a pre-existing relationship in that a member of the Board of Directors is an administrator of the college. 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 \$1,647,823, further broken down as follows:

Renovation and Demolition	\$1,303,641
Site Development	73,680
Temporary Utilities	8,363
Asbestos Abatement or Removal	4,658
Design Contingency	4,560
Construction Contingency	97,867
Fixed Equipment	26,000
Other Fees (Consultant)	13,500
Moveable Equipment	84,019
Telecommunications	20,532
CON Fee	2,000
Additional Processing Fee	<u>9,003</u>
Total Project Cost	\$1,647,823

Project costs are based on a construction start date of October 1, 2016, and a six-month construction period.

The applicant's financing plan appears as follows:

Fundraising	\$108,522
Equity (Landlord)	<u>1,539,301</u>
Total	\$1,647,823

Department staff has reviewed documentation provided by the landlord, which indicates sufficient equity.

Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, during the first and third years of operation, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues	\$132.30	\$1,795,358	\$130.71	\$3,442,169
Expenses				
Operating	\$106.41	\$1,443,993	\$115.38	\$3,038,644
Capital	<u>\$10.85</u>	<u>147,217</u>	<u>\$6.80</u>	<u>179,206</u>
Total Expenses	\$117.26	\$1,591,210	\$122.18	\$3,217,850
Excess of Revenues over Expenses		<u>\$204,148</u>		<u>\$224,319</u>
Utilization (Visits)		13,570		26,335

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	11.0%	13.0%
Medicaid Fee For Service	5.0%	3.0%
Medicare Managed Care	7.0%	10.0%
Medicare Fee For Service	3.0%	3.0%
Commercial Managed Care	30.0%	30.0%
Commercial Fee For Service	23.0%	20.0%
Private Pay	20.0%	20.0%
Charity Care	1.0%	1.0%

Expense and utilization assumptions are based on the demographic analysis of patient need in the proposed service area and the associated staffing requirements needed to address these needs.

The payer mix is consistent with the demographics of the area.

#### Capability and Feasibility

Project costs of \$1,647,823 will be met as follows: Equity (Landlord) of \$1,539,301 and Fundraising of \$108,522. The applicant has submitted bank account records of the landlord, Fei Tian College, which indicates the availability of sufficient funds for the equity contribution. The applicant has not received any proceeds relative to the fundraising. As a contingency of approval, the applicant must submit documentation acceptable to the Department of Health, of contributions to be used as the source of financing.

Working capital requirements are estimated at \$536,308, which is equivalent to two months of third year expenses. The applicant will meet the working capital requirements via equity via a pledge from Dragon Springs Buddhist, Inc. The applicant provided an executed pledge agreement that states that Dragon Springs Buddhist, Inc. is committed in providing the funds. The applicant has submitted bank accounts records of Dragon Springs Buddhist, Inc. indicating sufficient funds for the equity contribution. BFA Attachment A is the pro forma balance sheet of Northern Medical Center, Inc. as of the first day of operation, which indicates a positive net asset position of \$644,830.

The submitted budget indicates an excess of revenues over expenses of \$204,148 and \$224,319 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financial feasible manner.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A Pro Forma Balance Sheet of Northern Medical Center, Inc.



**Project # 152263-B**  
**USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis**

**Program:** Diagnostic and Treatment Center    **County:** Erie  
**Purpose:** Establishment and Construction    **Acknowledged:** November 4, 2015

**Executive Summary**

**Description**

USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis, a New York limited liability company, requests approval to establish and construct a 13-station Article 28 end-stage renal dialysis (ESRD) center. The proposed center will occupy 6,900 square feet of space located at 2861 Harlem Road, Cheektowaga (Erie County). The applicant will lease the space from Benderson Harlem Associates, L.P. pursuant to an arm's length lease agreement. The center will provide only outpatient hemodialysis service.

The proposed members of USRC West Cheektowaga, LLC and their ownership interests are:

<b>U.S. Renal Care, Inc. (USRC)</b>	<b>55%</b>
<b>LEDP II, LLC</b>	<b>45%</b>
Heather Wheat, M.D. (20%)	
Kristen Matteson, M.D. (20%)	
Arundathi Namassivaya, M.D. (20%)	
Richard Steinacher, M.D. (20%)	
Maria C.V. Del Castillo, M.D. (20%)	

U.S. Renal Care, Inc. currently has indirect ownership in the following three New York ESRD centers located in Erie County: USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis (13 stations); USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis (13 stations); and USRC

Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis (13 stations).

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There is currently an unmet need for 42 chronic dialysis stations in Erie County; this project would meet some of the unmet need for dialysis services.

**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 total project costs of \$1,818,147 will be met with \$181,815 of members' equity, \$345,000 via a landlord contribution, and an intercompany loan from USRC for \$1,291,332 at an interest rate of prime (3.50% as of February 5, 2016) with a five-year term. The projected budget is as follows:

	<u>Year Three</u>
Revenue	\$2,236,175
Expenses	<u>\$2,082,571</u>
Net Income	\$153,604

## 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 NYSE-CON upon mailing. [PMU]
2. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed intercompany revolving credit agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
6. Submission of documentation of receipt of the construction allowance payment from the Landlord, acceptable to the Department of Health. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
9. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
10. Submission of the applicant's amended and executed operating agreement, acceptable to the Department. [CSL]
11. Submission of a copy of the applicant's amended and executed Medical Director Agreement, acceptable to the Department. [CSL]
12. Submission of a copy of the applicant's amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
13. Submission of a copy of the applicant's amended and executed Company Agreement, acceptable to the Department. [CSL]
14. Submission of an amended and executed Operating Agreement of LEPD, II, LLC, acceptable to the Department. [CSL]
15. Submission of an amended and executed by-laws of U.S. Renal LEDP, II, LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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 06/06/2016 and construction must be completed by 10/07/2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 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]

7. 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.  
[AER]

Council Action Date

**April 14, 2016**

## Need Analysis

### Analysis

The population of Erie County in 2014 was 922,835. The table below shows the portion of the County population belonging to two groups statistically more likely to need end stage renal dialysis and compares it with the rest of the State.

	Erie County	New York State
Ages 65 and over:	16.5%	14.7%
Non-white:	23.6%	43.5%

Source: U.S. Census 2014

### 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 216 free-standing chronic dialysis stations operating in Erie County and 13 in pipeline for a total of 229.
- Based upon DOH methodology, the 216 existing free standing stations in Erie County could treat a total of 972 patients annually. Including the additional 13 pipeline stations, the county could treat a total of 1,030 patients annually.

### Need Projections

Erie County Residents		Actual		Projected	
		2014	2015	2019	
Need projected 5 years out from most current IPRO data available for Patients Treated in County		Total Patients Treated in County	Total County Residents in Treatment	Total Patients Treated in County <sup>1</sup>	Total County Residents in Treatment <sup>1</sup>
		1,320	1,219	1,531	1,372
Free-Standing Dialysis Stations		2014	2015	2019	
A	Stations Required to Treat <sup>2</sup>	294	271	341	305
B	Existing Stations	216	216	216	216
C	Stations In Pipeline	13	13	13	13
D	Stations Requested this CON	13	13	13	13
E	w/Approval of This CON (B+C+D)	242	242	242	242
F	Unmet Need With Approval (A-E)	52	29	99	63

<sup>1</sup> Based upon an estimated 3% accrued annual increase

<sup>2</sup> Based upon DOH methodology (total patients/4.5)

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 needed stations from existing stations. Patient and resident data are from IPRO.

The applicant estimates that the facility will provide 2,151 chronic renal dialysis treatments in Year 1 and 6,406 dialysis treatments in Year 3 of operations.

**Conclusion**

This project will increase the number of approved free-standing dialysis stations in Erie County from 229 to 242. The additional stations will help to reduce the unmet need for dialysis services among County residents.

**Recommendation**

**From a need perspective, approval is recommended.**

**Program Analysis**

**Project Proposal**

USRC West Cheektowaga, LLC dba U.S. Renal Care West Cheektowaga Dialysis, an existing limited liability company, seeks approval to establish and construct a 13-station chronic renal dialysis center at 2861 Harlem Road in Cheektowaga (Erie County).

<b>Proposed Operator</b>	USRC West Cheektowaga, LLC
<b>Doing Business As</b>	U.S. Renal Care West Cheektowaga Dialysis
<b>Site Address</b>	2861 Harlem Road Cheektowaga, NY 14225 (Erie County)
<b>Approved Services</b>	Chronic Renal Dialysis (13 Stations)
<b>Shifts / Hours / Schedule</b>	Hours: 6:00 am to 8:00 pm Initially, clinic will be open 3 days/week (Monday/Wednesday/Friday). By the end of Year 2, the clinic anticipates to expand to 6 days/week (Tuesday/Thursday/Saturday)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	7.5 FTEs increasing by 4.0 FTEs by the third year of operation
<b>Medical Director(s)</b>	Maria Concepcion V. Del Castillo, M. D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Catholic Health- Kenmore Mercy Hospital 8.98 miles / 15 minutes away

**Character and Competence**

The members of USRC West Cheektowaga, LLC are as follows:

<u>Name</u>	<u>Membership Interest</u>
<b>U.S. Renal Care, Inc.</b>	<b>55.0%</b>
<i>Directors &amp; Officers</i>	
J. Christopher Brengard	
Stephen M. Pirri	
Thomas L. Weinberg	
James D. Shelton	
David P. Eldridge	

**LEDP II, LLC****45.0%**

Heather Wheat, MD, *manager* (20%)  
Kristen Matteson, MD, *manager* (20%)  
Arundathi Namassivaya, MD (20%)  
Richard Steinacher, DO (20%)  
Maria Concepcion V. Del Castillo, MD (20%)

Disclosure information was also submitted and reviewed for the Medical Director. Dr. Maria Concepcion V. Del Castillo is board-certified in Internal Medicine and Nephrology and has extensive experience with the renal population. Dr. DelCastillo completed a Fellowship in Nephrology at North Shore University Hospital (Manhasset) and has admitting privileges at Millard Filmore Hospital, Kenmore Mercy Hospital, South Buffalo Mercy Hospital and Degraff Memorial Hospital.

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.

*The members of LEDP II, LLC disclosed the following: In March 2007, Nephrology Associates of WNY, LLP became aware of a billing error involving the drug Aranesp. The Group investigated the billing error and completed a full audit. Subsequently, the Group self-reported to Medicare through the (Buffalo area) US Attorney General's Office and the matter was settled.*

*The officers of U.S. Renal Care (USRC) disclosed that U.S. Renal Care acquired Dialysis Corporation (DCA) in June 2010, however, in February 2010, DCA had been subpoenaed by the Office of the Inspector General of the U.S. Department of Health and Human Service (OIG) with respect to an investigation relating to alleged improper Medicare and Medicaid billing at certain DCA clinics. The investigation related to two qui tam suits with the Department of Justice and private litigants. USRC denied any impropriety or liability by DCA in both cases, but determined that it should settle those cases with the government and private litigants which it did in May 2013 and September 2014. Both suits have been dismissed. No non-DCA facilities owned by USRC were involved in the investigations and litigation.*

**Star Ratings - Dialysis Facility Compare (DFC)**

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare (DFC) website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.



To calculate the star rating for a facility, each domain score is calculated by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, facilities are awarded stars as delineated below.

Facilities with the top 10% final scores are given 5 stars.

Facilities with the next 20% highest final scores are given 4 stars.

Facilities within the middle 40% of final scores are given 3 stars.

Facilities with the next 20% lowest final scores are given 2 stars.

Facilities with the bottom 10% final scores are given 1 star.

U.S. Renal Care, Inc. operates over 190 dialysis centers in the nation and has indirect ownership in three centers located in New York State's Erie County. As USRC will have a 55% membership interest in USRC West Cheektowaga, the Star Ratings for USRCs New York facilities are noted below. (A comprehensive list of Star Ratings for all USRC-operated centers is provided in **HSP Attachment A.**)

<b><u>New York Facilities operated by U.S. Renal Care (USRC)</u></b>	<i>(Refer to <b>HSP Attachment A</b> for a list of all of USRCs dialysis centers.)</i>	
USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite 13 C/D Cheektowaga NY 14225	★ ★ ● ● ●
USRC Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Rd Suite 8-A Williamsville NY 14221	★ ★ ★ ● ●
USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Rd Tonawanda NY 14150	★ ★ ★ ★ ●

*(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 3/4/16)*

#### Recommendation

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

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

#### Total Project Costs and Financing

Total project costs for renovation and moveable equipment are estimated at \$1,818,147 broken down as follows:

Renovation & Demolition	\$1,126,750
Design Contingency	\$6,900
Construction Contingency	\$112,675
Architect/Engineering Fees	\$69,000
Movable Equipment	\$447,546
Telecommunications	\$43,342
CON Fee	\$2,000
Additional Processing Fee	<u>\$9,934</u>
<b>Total Project Cost</b>	<b>\$1,818,147</b>

Project costs are based on a construction start date of June 6, 2016, with a four-month construction period.

The landlord is contributing \$345,000 toward construction of the center for building improvements related to demolition and renovation. The costs for bringing the center online will be borne as follows:

The applicant's financing plan appears as follows:

Equity	\$181,815
Intercompany Loan (prime [3.5% at 2/4/16], 5-year term)	\$1,291,332
Landlord financed portion (construction allowance)	<u>\$345,000</u>
Total	\$1,818,147

Equity of \$181,815 will be provided from the proposed members as follows: \$99,998 from USRC, and \$81,817 from LEDP II, LLC. USRC has provided a letter of interest for the Intercompany Loan. The landlord, Benderson Harlem Associates, L.P., has provided for a \$345,000 construction allowance in the lease agreement to cover part of the demolition and renovation costs associated with this project.

#### Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site, summarized below:

Date:	October 21, 2015
Premises:	6,900 sq. ft. in a building located at 2861 Harlem Road, Cheektowaga, NY
Lessor:	Benderson Harlem Associates, L.P.
Lessee:	USRC West Cheektowaga, LLC
Term:	10 years
Rental:	Years 1-5: \$151,800 per year (\$12,650 per month, \$22 per sq. ft.) Years 6-10: \$165,600 per year (\$13,800 per month, \$24.03 per sq. ft.)
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

An affidavit has been submitted stating that the lease is an arm's length lease. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

#### Administrative Services Agreement

The applicant submitted a draft administrative services agreement (ASA), as summarized below:

Facility:	USRC West Cheektowaga, LLC
Contractor:	U.S. Renal Care, Inc.
Services Provided:	Provide for benefit of and subject to direction of Licensed Operator: personnel training, monitoring & oversight; assist with compensation, benefits, personnel policies, and performance standards for administrative and ancillary health care staff; provide at cost of the Licensed Operator, supplies and inventory necessary for the clinic's operation under national and regional supply agreements; assist in purchasing drugs and medical supplies; patient billing/collecting functions; assist in report preparation and filing, contract negotiations, and reimbursement related audits; assist in maintenance of financial records; manage clinics funds: obtain appropriate commercial insurance coverage; recommend operational policies and procedures to establish appropriate standards of patient care; provide access to selected proprietary software; at the Licensed Operator's cost furnish all medical and office equipment, furniture and fixtures, maintain equipment and make necessary capital improvements; assist in development of quality assurance and review programs, maintain licenses and permits including Medicaid and Medicare provider numbers; assist in compliance with all applicable federal and state rules and regulations
Term:	10 years
Fee:	\$69,100 per year (\$5,758.33 per month)

While U.S. Renal Care Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility, and control of the operations.

There is common ownership between the applicant and the ASA provider as shown on BFA Attachment B, post-closing organization chart.

## Operating Budget

The applicant submitted an operating budget, in 2015 dollars, for Years One and Three of operations, summarized below:

	Year One		Year Three	
	Per Treatment	Total	Per Treatment	Total
<u>Revenues</u>				
Medicare FFS	\$250	\$167,296	\$250	\$514,320
Medicare MC	\$250	\$232,760	\$251	\$715,576
Commercial FFS	\$835	\$152,749	\$1,287	\$469,597
Commercial MC	\$750	\$145,475	\$750	\$447,235
Medicaid FFS	\$251	\$21,821	\$250	\$67,085
Private Pay	\$251	<u>\$7,274</u>	\$251	<u>\$22,362</u>
Total Revenues		\$727,375		\$2,236,175
<u>Expenses</u>				
Operating	\$429	\$922,455	\$261	\$1,674,604
Capital	<u>\$192</u>	<u>\$412,523</u>	<u>\$64</u>	<u>\$407,967</u>
Total Expenses	\$621	\$1,334,978	\$325	\$2,082,571
Net Income/(Loss)		<u>(\$607,603)</u>		<u>\$153,604</u>
Utilization (Treatments)		2,151		6,406

Utilization broken down by payor source during years one and three is as follows:

	Year One		Year Three	
	Treatments	%	Treatments	%
Medicare FFS	669	31.10%	2,057	32.11%
Medicare MC	931	43.28%	2,853	44.54%
Commercial FFS	183	8.51%	365	5.70%
Commercial MC	194	9.02%	596	9.30%
Medicaid FFS	87	4.04%	268	4.18%
Private Pay	29	1.35%	89	1.39%
Charity Care	<u>58</u>	<u>2.70%</u>	<u>178</u>	<u>2.78%</u>
Total	2,151	100.00%	6,406	100.00%

The following is noted with respect to the submitted budget:

- Revenues are based on the bundled ESRD rate of \$250 per treatment for Medicaid and Medicare patients, while the commercial rate is based on USRC's local contracts within the Buffalo market.
- Expenses are based on current market rates in the area and USRC's contracted rates and average clinical utilization for such services including: medication and medical supplies, utilities, equipment and professional fees.
- Utilization is based on USRC's standard utilization methodology for opening a new dialysis facility in a region, which includes conservative estimates during the initial start-up period.
- Breakeven utilization is 48.68% or 5,923 treatments.

The budget is reasonable.

## Capability and Feasibility

Project costs of \$1,818,147 will be met via members' equity of \$181,815, an intercompany loan from USRC for \$1,291,332 at the above stated terms, and a \$345,000 construction allowance provided by the landlord.

Working capital requirements are estimated at \$347,095, which is equivalent to two months of Year Three expenses. The applicant indicated they will provide \$575,000 towards working capital, which is approximately \$227,905 over the estimated working capital equity requirement. The members will provide equity equivalent to their ownership percentages. USRC's equity portion is \$235,332 and will

come from operations. LEDP II, LLC equity portion is \$192,543 and will come from the members' personal net worth. The remaining \$147,125 will be provided through an intercompany loan from USRC at an interest rate of prime (3.5% as of February 5, 2016) with a five-year term. A letter of interest has been provided by USRC for the proposed working capital financing.

BFA Attachment A is the personal net worth statements of the members of LEDP II, LLC, which indicates sufficient liquid resources to cover all equity requirements associated with this CON.

BFA Attachment C is the 2013-2014 certified and internal financial statements of U.S. Renal Care, Inc. as of November 30, 2015, which indicate the entity maintained positive working capital and net asset positions for the period, and generated net income of \$48,652,324 in 2014 and \$42,065,066 through November 30, 2015. During 2013, US Renal Care, Inc. incurred a loss of \$428,918. The loss was due to a one-time transaction for early retirement of debt transaction expenses. Without this transaction, the facility would have achieved break even for 2013. As shown above, USRC has sufficient liquid resources available to cover their portion of both equity requirements and to provide the funding for both intercompany loans.

BFA Attachment D is the pro forma balance sheet of USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis as of the first day of operation, which indicates the operation will begin with a positive members' equity of \$575,000.

The submitted budget indicates a net loss of \$607,603 and a net income of \$153,604 for Year One and Year Three, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The Year One loss is due to the start-up of operations and will be covered by U.S. Renal Care, Inc. through a revolving credit agreement. The submitted budget is reasonable.

BFA Attachment E is the financial summaries of U.S. Renal Care, Inc.'s three affiliated New York dialysis centers for the period 2013 through November 30, 2015, which shows that each facility had a positive working capital positions, positive net asset positions and operating surpluses for the period 2013-2014. In 2015, USRC Tonawanda had a positive working capital position, positive net asset position and operating surpluses. USRC Williamsville, Inc. and USRC Cheektowaga, Inc. had negative working capital positions and operating deficits of \$255,084 and \$297,662, respectively; however, both entities had positive net asset positions for the period. The negative working capital positions were due to negative intercompany payables which misstated the current assets. The net losses were due to out-of-period allocated administrative costs of \$487,973 and \$855,382, respectively. Without these transactions, both companies would have had a positive working capital position and positive net income.

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 Net Worth Statements of the members' of LEDP II, LLC  
BFA Attachment B Post- Closing Organizational Chart  
BFA Attachment C U.S. Renal Care, Inc. & Subsidiaries 2013-2014 Certified and 1/1/2015-11/30/2015 Internal Financial Statements  
BFA Attachment D Pro-Forma Balance Sheet of USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis  
BFA Attachment E Affiliated New York Dialysis Centers Financial Summary 2013 - 11/30/2015.  
HSP Attachment A Star Rating Profile for all U.S. Renal Care, Inc Facilities



**Project # 152313-B**  
**Queens Boulevard Extended Care Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Establishment and Construction    **Acknowledged:** November 30, 2015

**Executive Summary**

**Description**

Queens Boulevard Extended Care Dialysis Center, LLC, an existing New York limited liability company, requests approval to establish and construct a 15-station Article 28 chronic renal dialysis center. The proposed Center will be located in separate designated space at Queens Boulevard Extended Care Facility, a 280-bed Article 28 residential health care facility (RHCF) located at 61-11 Queens Boulevard, Woodside (Queens County). The dialysis center will occupy approximately 4,500 square feet on the ground floor of the RHCF. The facility will offer on-site dialysis services to the RHCF's patients and to community residents, with its primary service area being Queens County.

The proposed members of Queens Boulevard Extended Care Dialysis, LLC are Anthony Clemenza, Jr. (50%) and James Clemenza (50%). There is a relationship between Queens Boulevard Extended Care Dialysis Center, LLC and Queens Boulevard Extended Care Facility, which is operated by Queens Boulevard Extended Care Facility Management, LLC, in that Anthony Clemenza, Jr. and James Clemenza are members and managers of both entities.

The fit-out and equipping of the Center will be the responsibility of the applicant. The space is currently occupied by a 30-slot adult day health care program (ADHCP) operated by the RHCF, which will be relocated to an off-site location. A CON application to relocate the ADHCP will be

submitted upon approval of this application. The applicant will lease the space from Queens Boulevard Extended Care Facility Management, LLC.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
Currently there is a need for 145 stations in Queens County. The addition of fifteen stations will improve the availability of dialysis services for the residents of Queens 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**  
Total project cost of \$2,023,108 will be financed with equity of \$202,311 from the proposed members' personal resources and a bank loan of \$1,820,797 at 4.5% interest for a seven-year term. A bank letter of interest has been provided. The projected budget is as follows:

Revenues:	\$3,652,482
Expenses:	<u>3,272,837</u>
Net Income:	\$379,645

## 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 NYSE-CON upon mailing. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a photocopy of the applicant's Medical Director Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed lease 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 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 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. [AES]
7. Construction must start on or before 07/01/2016, and must be completed by 06/30/2017, 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. [AES]

Council Action Date

**April 14, 2016**

# Need Analysis

## Analysis

The primary service area for the proposed facility is Queens County, which had an estimated population of 2,321,580 for 2014. The table below shows the portion of the county population belonging to two groups statistically more likely to need end stage renal dialysis and compares it with the rest of the state.

	Queens County	New York State
Ages 65 and over:	13.6%	14.7%
Non-white:	50.9%	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 525 free standing chronic dialysis stations operating in Queens County and 170 in pipeline for a total of 695 stations.
- Based upon DOH methodology, the 525 existing free standing stations in Queens County could treat a total of 2,633 patients annually. Including the additional pipeline stations, the county could treat a total of 3,128 patients annually.

## Projected Need

Queens County Residents	Actual		Projected	
	2014	2015	2019	
Need projected 5 years out from Most current IPRO data available for Patients Treated in County	Total Patients Treated in County	Total County Residents in Treatment	Total Patients Treated in County <sup>1</sup>	Total County Residents in Treatment <sup>1</sup>
	3,741	3,777	4,337	4,252
<b>Free-Standing Dialysis Stations</b>	<b>2014</b>	<b>2015</b>	<b>2019</b>	
A Stations Required to Treat <sup>2</sup>	832	840	964	945
B Existing Stations	525	525	525	525
C Stations In Pipeline	170	170	170	170
D Stations Requested this CON	15	15	15	15
E w/Approval of This CON (B+C+D)	710	710	710	710
F Unmet Need With Approval (A-E)	122	130	254	235

<sup>1</sup> Based upon an estimated 3% accrued annual increase

<sup>2</sup> Based upon DOH methodology (total patients/4.5)

The data in the first row, "Stations Required to Treat," 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 needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2015.

**Conclusion**

Queens County serves a population of 2,321,580 with a total of 695 stations, including pipeline stations. There continues to be a need for additional dialysis stations in Queens County. Approval of these fifteen stations will improve access to dialysis services in the area.

**Recommendation**

**From a need perspective, approval is recommended.**

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

Queens Boulevard Extended Care Dialysis, LLC seeks approval to establish and construct a fifteen station end-stage renal dialysis center on the ground floor of Queens Boulevard Extended Care Facility, an existing 280-bed residential health care facility located at 61-11 Queens Boulevard, in Woodside (Queens County).

<b>Proposed Operator</b>	Queens Boulevard Extended Care Dialysis, LLC
<b>Site Address</b>	61-11 Queens Boulevard Woodside, New York 11377 (Queens County)
<b>Approved Services</b>	Chronic Renal Dialysis (15 Stations)
<b>Shifts/Hours/Schedule</b>	Initial operation will be two (2) shifts per day Monday through Saturday from 6:00 am to 5:00 pm, with the projection of going to three (3) shifts per day in the fourth year of operations.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	15.1 FTEs / 20.5 FTEs
<b>Medical Director(s)</b>	Tahir Hafeez, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Forest Hills Hospital 3.5 miles / 15 minutes

**Character and Competence**

The members of the LLC are:

Name	Membership	Title
Anthony Clemenza, Jr.	50%	Manager/Member
James Clemenza	50%	Manager/Member

The proposed members have extensive experience operating health related facilities and associated programs. Messrs. Cleeenza are also members of Queens Boulevard Extended Care Facility Management, LLC, the operator of Queens Boulevard Extended Care Facility, and as such, handle day-to-day operations to include: purchasing, maintenance, housekeeping, dietary, finance, and administration. Additionally, Mr. Anthony Clemenza also serves as In-house Counsel, coordinating the legal affairs of the facility.

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Tahir Hafeez, MD. Dr. Hafeez is board-certified in Internal Medicine and Nephrology and has roughly 20 years of experience in the care and treatment of dialysis patients.



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.**

<h2>Financial Analysis</h2>
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Lease Rental Agreement

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

Premises:	4,500 square feet located at 61-11 Queens Boulevard, Woodside, New York
Lessor:	Queens Boulevard Extended Care Facility Management, LLC
Lessee:	Queens Boulevard Extended Care Dialysis Center, LLC
Term:	5-year term with a 5-year renewal period
Rental:	\$103,500 annually (\$23.00 per sq. ft.)
Provisions:	Lessee shall be responsible for maintenance, utilities, insurance and real estate taxes.

The proposed lease is non-arm's length. The applicant has submitted an affidavit indicating there is common ownership between the lessor and lessee. Two NYS licensed realtors submitted letters attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost, which includes renovations and the acquisition of moveable equipment, is estimated at \$2,023,108 broken down as follows:

Renovation and Demolition	\$1,027,520
Design Contingency	102,551
Construction Contingency	102,752
Architect/Engineering Fees	92,477
Other Fees (Consultant)	25,220
Moveable Equipment	565,680
Financing Costs	19,164
Interim Interest Expense	74,489
CON Fee	2,000
Additional Processing Fee	<u>11,055</u>
Total Project Cost	<b>\$2,023,108</b>

Project costs are based on a construction start date of July 1, 2016, and a 12-month construction period.

The applicant's financing plan appears as follows:

Equity	\$202,311
Bank Loan (4.5% interest, 7-year term)	1,820,797

Investors Bank has provided a letter of interest for the financing at the stated terms.

#### Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee for Service	\$33,072	\$33,072
Medicare Fee for Service	1,380,388	1,941,170
Commercial Fee for Service	191,225	382,450
Commercial Managed Care	<u>985,608</u>	<u>1,314,144</u>
Total Revenues	\$2,590,293	\$3,670,836
Less: Bad Debt	<u>12,952</u>	<u>18,354</u>
Net Revenues	\$2,577,341	\$3,652,482
Expenses:		
Operating	\$2,116,861	\$2,923,301
Capital	<u>374,659</u>	<u>349,536</u>
Total Expenses	\$2,491,520	\$3,272,837
Net Income	\$85,821	\$379,645
Utilization (Treatments)	6,240	8,736
Cost Per Treatment	\$399.28	\$374.64

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	2.50%	1.78%
Medicare Fee for Service	80.00%	80.36%
Commercial Fee for Service	2.50%	3.57%
Commercial Managed Care	15.00%	14.29%

Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services. Expense and utilization assumptions are based on historical trends of other facilities that provide chronic renal dialysis services in Queens County.

#### Capability and Feasibility

Project costs of \$2,023,108 will be met via equity of \$202,311 from the proposed members and a bank loan of \$1,820,797 at 4.5% interest for a seven-year term. A bank letter of interest has been provided.

Working capital requirements are estimated at \$545,473, which is equivalent to two months of third year expenses. The applicant will finance \$272,736 at an interest rate of 4.125% for a five-year term. The remaining \$272,737 will be provided from equity. Investors Bank has provided a letter of interest in regard to the financing. BFA Attachment A is the personal net worth statements for the proposed members of Queens Boulevard Extended Care Dialysis Center, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the purchase price and working capital requirement. BFA Attachment B is the pro forma balance sheet of Queens Boulevard Extended Care Dialysis Center, LLC as of the first day of operation, which indicates a positive net asset position of \$475,048.

The submitted budget indicates a net income of \$85,821 and \$379,645 during the first and third years, respectively. Revenues are based on current reimbursement rates for dialysis services.

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.**

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## Attachments

BFA Attachment A Personal net worth statement for the proposed members  
BFA Attachment B Pro forma balance sheet



**Project # 142145-E  
Ross Acquisition, LLC  
d/b/a Ross Center for Health and Rehabilitation**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** October 8, 2014

**Executive Summary**

**Description**

Ross Acquisition, LLC d/b/a Ross Center for Nursing and Rehabilitation (Ross Center), a New York limited liability company, requests approval to be established as the new operator of Ross Health Care Center, a 135-bed, proprietary, Article 28 residential health care facility (RHCF) located at 839 Suffolk Avenue, Brentwood (Suffolk County). As part of this application, the certified bed capacity will be reduced 15 beds, bringing the total certified bed count to 120. Concurrently, a separate realty entity, Ross Realty Acquisition, LLC, will acquire the facility's real property. There will be no change in services provided.

On August 21, 2014, Ross Health Care Center, Inc., the current operator, entered into an Asset Purchase Agreement with Ross Acquisition, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, Ross Health Care Realty, LLC, the current real property owner, entered into a Contract of Sale with Ross Realty Acquisition, LLC for the sale and acquisition of the real property interest of the nursing facility. There is a relationship between Ross Acquisition, LLC and Ross Realty Acquisition, LLC in that the entities have several members in common. The applicant will lease the premises from Ross Realty Acquisition, LLC.

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>	
Ross Health Care Center, Inc.	
<u>Members</u>	<u>%</u>
Agnes Zitter	50%
Marvin Ostreicher	25%
Mayer Laufer	25%

<u>Proposed Operator</u>	
Ross Acquisition, LLC	
<u>Members</u>	<u>%</u>
Leopold Friedman	5%
Avi Philipson	20%
Deena Hersh	20%
Joel Leifer	55%

BFA Attachment C presents the Current and Proposed Owners of the real property.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The decertification of 15 beds will help move the facility and planning region toward optimum utilization.

### Program Summary

No negative information has been received concerning the character and competence of the proposed members of the applicant operator.

### Financial Summary

The purchase price for the RHCF operating interests was originally \$1,875,000; however, as the result of the bed reduction, the seller and buyer agreed to revise the purchase price to \$0.00 (zero). Ross Realty Acquisition, LLC, will acquire the real property for \$15,000,000 funded by \$3,000,000 in members' equity and a loan for \$12,000,000 at 6% interest for a 30-year term.

There are no project costs associated with this application. The projected budget is as follows:

Revenues:	\$13,602,496
Expenses:	<u>\$13,320,287</u>
Gain:	\$282,209

## 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission and programmatic review of plans showing the 15 beds to be decertified and the nursing units to be affected. [LTC]
8. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Lease and Purchase Agreement of Real Property, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed copy of the Certificate of Assumed Name, acceptable to Department. [CSL]
12. Submission of a photocopy of the applicant's Asset Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

## Project Description

Ross Acquisition, LLC, doing business as Ross Health Care Center, seeks approval to become the established operator of Ross Health Care Center, a 135-bed Article 28 residential health care facility (RHCF), located at 839 Suffolk Avenue, Brentwood, 11717, in Suffolk County.

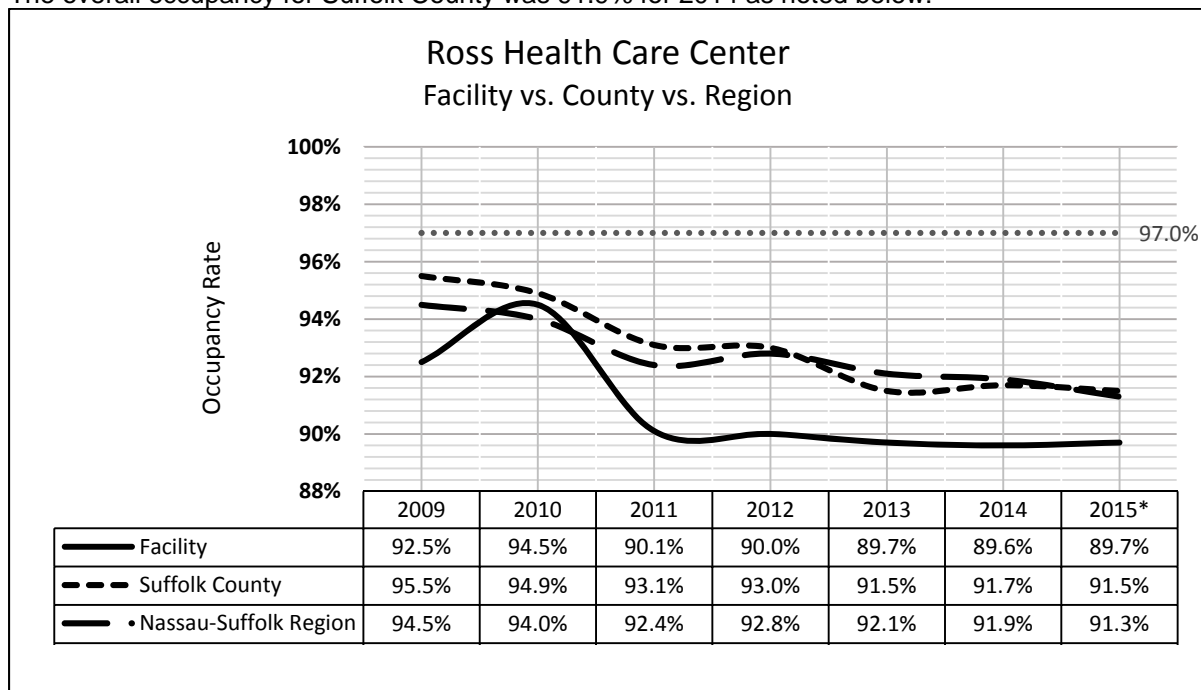
## Analysis

The Need methodology indicates a need for 2,003 beds in the Nassau-Suffolk Region as noted below. However, as shown on the chart below, utilization has been below optimal (97%) for over seven years.

### RHCF Need – Nassau-Suffolk Region

<b>2016 Projected Need</b>	16,962
<b>Current Beds</b>	15,352
<b>Beds Under Construction</b>	-393
<b>Total Resources</b>	14,959
<b>Unmet Need</b>	2,003

The overall occupancy for Suffolk County was 91.9% for 2014 as noted below:



\*unaudited, based on weekly census

According to the applicant, the facility experienced low occupancy as a result of being a small facility relative to other facilities in the local planning area and the need for flexibility in pairing roommates due to an increase in short term rehabilitative stays.

The applicant intends to increase occupancy in the following ways:

- Decertify 15 beds;
- Keep in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
  - Implementation of Institutional Special Needs Plan (I-SNP) services;
  - Development of new and enhancement of existing care programs, including its Wound Care Program and Short-Term Rehabilitation Services; and
  - Partnerships with hospitals, managed care plans and other long-term providers;



- Transform the care model to ensure residents served by the facility are those truly in need of level of care being provided at the RHCF; and
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost saving to the Department.

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.

Ross Health Care Center’s Medicaid admissions of 33.0% in 2012 and 26.6% in 2013 exceeded the Suffolk County 75% rates of 21.1% in 2012 and 19.4% in 2013.

Conclusion

The decertification of 15 beds will help move the facility and planning region toward optimum utilization.

Recommendation

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Ross Health Care Center	Ross Center for Nursing and Rehabilitation
Address	839 Suffolk Avenue Brentwood, NY 11717	Same
RHCF Capacity	135	120
ADHC Program Capacity	N/A	Same
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	Ross Health Care Center, Inc.	Ross Acquisition, LLC  <div style="margin-left: 20px;"> <u>Members</u>            Joel Leifer*                    55%            Deena Hirsh                    20%            Avi Philipson*                20%            Leo Friedman*                5%         </div>
		*Managing Members

## Facilities Reviewed

### Nursing Homes

Brooklyn Gardens Nursing & Rehabilitation Center	09/2014 to present
Chautauqua Nursing and Rehabilitation Center	01/2015 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Sapphire Center for Rehab and Nursing of Central Queens, LLC	01/2015 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge	02/2015 to present
The Pavilion at Queens for Rehabilitation and Nursing	01/2015 to present

### Licensed Home Care Services Agency (LHCSA)

Ultimate Care, Inc.	02/2010 to present
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### Out of State Facility Interests

Lakeview Rehabilitation and Care Center (NJ)	09/2015 to present
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## Individual Background Review

Current ownership shares are shown in brackets.

**Joel Leifer** lists his current employment as Administrative Director for Atrium Center for Rehabilitation since 2010, and Staten Island Care Center since 2002. Mr. Leifer has recently acquired an out of state care facility interest. Mr Leifer has received Public Health and Health Planning Council approval to become an Operator of Cold Spring Nursing and Rehabilitation Center, however, the transaction has not been finalized.

Lakeview Rehabilitation and Care Center (NJ)	9/2015 to present
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**Deena Hersh** indicates that she has no employment history. Ms. Hersh discloses the following interests in health care facilities.

Chautauqua Nursing and Rehabilitation Center [25%]	01/2015 to present
Sapphire Center for Rehab and Nursing of Central Queens [35%]	01/2015 to present
Seagate Rehabilitation and Nursing Center [10%]	12/2014 to present
The Pavilion at Queens for Rehabilitation and Nursing [25%]	01/2015 to present

**Avi Philipson** discloses that he is currently a student in Jerusalem, Israel and discloses no employment history. Mr. Philipson discloses the following health care facility interest, of which he is a managing member.

Seagate Rehabilitation and Nursing Center [10%]	12/2014 to present
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Mr. Philipson has received Public Health and Health Planning Council approval to operate the facilities listed below, however, the transactions have not been finalized.

Cold Spring Hills Center for Nursing and Rehabilitation  
St. Barnabas Center for Nursing and Rehabilitation,  
The Plaza Rehab and Nursing Center.

**Leo Friedman** is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following ownership interests:

Brooklyn Gardens Nursing & Rehabilitation [board member]	09/2014 to present
DeWitt Rehabilitation and Nursing Center [3%]	06/2015 to present
Hendon Garden Nursing and Rehabilitation Center [20%]	11/2014 to present
Peninsula Nursing and Rehabilitation Center [25%]	01/2013 to present
The Citadel Rehab and Nursing Center at Kingsbridge [50%]	02/2015 to present
Ultimate Care, Inc.(LHCSA) [33.33%]	02/2010 to present

Mr. Friedman has pending ownership in the following facilities which have been approved by Public Health and Health Planning Council, but have not transferred as of this writing.

Cold Spring Hills Center for Nursing and Rehabilitation  
Hudson Point Acquisition, LLC  
Long Beach Nursing and Rehabilitation Center  
St. Barnabas Center for Nursing and Rehabilitation  
The Plaza Rehab and Nursing Center  
Brooklyn Gardens Dialysis Center, LLC  
Cassena Care Dialysis at Peninsula

#### Character and Competence Analysis

A review of operations for Brooklyn Gardens Nursing & Rehabilitation Center, Chautauqua Nursing and Rehabilitation Center, DeWitt Rehabilitation and Nursing Center, Hendon Garden Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sapphire Center for Rehab and Nursing of Central Queens, LLC, Seagate Rehabilitation and Health Care Center, The Citadel Rehab and Nursing Center at Kingsbridge, and The Pavilion at Queens for Rehabilitation and Nursing for the periods identified above revealed that there were no enforcements.

A review of the operations for Ultimate Care, Inc., for the period identified above, revealed there were no enforcements.

A review of the New Jersey Department of Health website as well as an affidavit submitted by the applicant for Lakeview Rehabilitation and Care Center for the period identified above revealed that there are no enforcements.

#### Project Review

This application proposes to establish Ross Acquisition, LLC as the new operator for Ross Center for Nursing and Rehabilitation. No changes in the program is proposed in this application. This application proposes a reduction of fifteen RHCF beds.

Sentosa Healthcare, LLC, whose members are directly related to the principles of this application, has common ownership with the real estate entity which will purchase the property. These members have also submitted affidavits stating that they will provide equity to the proposed operator, Ross Acquisition, LLC. However the applicants have responded that there will be no consulting and administrative services agreements with Sentosa or any other entity contemplated for the facility after the transfer of ownership.

No negative information has been received concerning the character and competence of the above applicants identified as new members.

#### 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 applicant has met the standard for approval 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 to acquire the RHCF's operating interest. The terms are summarized below:

Date:	August 21, 2014
Seller:	Ross Health Care Center, Inc.
Purchaser:	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: tangible assets used in the business; permitted records; applicable warranties; contracts and agreements including managed care and third party reimbursement contracts; intellectual property rights and trademarks; books and records relating to business operations; assignable licenses and permits including Medicare and Medicaid provider numbers; resident trust funds; goodwill and going concern value.
Excluded Assets:	Cash and cash equivalents, pre-closing accounts receivables; refunds and settlements prior to closing, any websites and e-mail addresses; records not applicable to the operations; refunds; charitable gift, grant, bequest or legacy.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$0.00 (zero as revised due to bed reduction)
Payment:	\$140,625 escrow deposit paid at the time of signing (refund due).

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 outstanding Medicaid Assessment liabilities as of February 15, 2016.

### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed purchase and sale agreement related to the acquisition of the RHCF's real property. The closing will become effectuated upon PHHPC approval of this CON. The terms of the realty agreement are summarized below:

Date:	August 21, 2014
Seller Realty:	Ross Health Care Realty, LLC
Purchaser Realty:	Ross Realty Acquisitions, 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 839 Suffolk Avenue, Brentwood, New York 11717 and further identified as Parcel # 0500138000100001001.
Purchase Price:	\$15,000,000
Payment of Purchase Price:	\$1,125,000 escrow deposit (paid at the time of signing) \$13,875,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity (Ross Acquisitions, LLC Members)	\$3,000,000
Loan (30-year term, 6% interest)	<u>\$12,000,000</u>
Total	\$15,000,000

Greystone Funding Corporation has provided a letter of interest at the stated terms.

BFA Attachment B is the proposed members' net worth summaries for Ross Realty Acquisitions, LLC, which reveals sufficient resources to meet the equity requirements. However, liquid resources may not be available in proportion to ownership interests. Proposed realty members Bent Philipson (on behalf of Philipson Family LLC) and Benjamin Landa have provided affidavits stating their willingness to contribute resources disproportionate to their membership interest in the realty entity.

#### Lease Agreement

An executed lease has been submitted to lease the real property. The terms are summarized below:

Premises:	135-bed RHCf located at 839 Suffolk Avenue, NY 11717
Owner/Landlord:	Ross Realty Acquisitions, LLC
Lessee:	Ross Acquisitions, LLC
Term:	30 years
Rent:	Annual rent equal to the sum of the Lessor's debt service on the real property mortgage (assessed at \$863,353), plus an additional \$500,000 per year. Year one rent = \$1,363,353 (or \$113,613 per month )
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and the tenant in that the entities have several members in common.

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first and third years of operations subsequent to the change in ownership. The first year budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u> (135 Beds)	<u>Per Diem</u>	<u>Total</u> (120 Beds)
Revenues (RHCf Beds):				
Medicaid	\$255.72	\$9,164,132	\$252.91	\$8,554,013
Medicare	\$508.19	2,345,312	\$624.97	3,794,175
Commercial & Private Pay	\$398.98	1,473,029	\$425.00	1,474,308
Bad Debt		<u>(220,000)</u>		<u>(220,000)</u>
Total Revenues		\$12,762,473		\$13,602,496
Expenses:				
Operating	\$289.92	\$12,798,303	\$264.87	\$11,485,267
Capital	<u>\$10.82</u>	<u>477,717</u>	<u>\$42.32</u>	<u>1,835,020</u>
Total Expenses	\$300.74	\$13,276,020	\$307.19	\$13,320,287
Net Income (Loss)		<u>(\$513,547)</u>		<u>\$282,209</u>
Patient Days		44,144		43,362
Occupancy		89.59%		99%

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

- The current year reflects the facility's 2014 RHCf-4 cost report information.
- Medicaid revenues are based on the facility's current 2015 Medicaid FFS rate.
- Medicare revenues are based on the average daily rate experienced by the facility during 2015.
- Commercial and Private pay rates are based on the facility's current 2015 experience.
- Based on 135-beds, average utilization from 2011-2014 was 89.8%. Comparing historical occupancy using the proposed 120-beds, the 2011-2014 average utilization would be 101.13%. As of February 3, 2016, occupancy was 88.1% per the Division of Nursing Homes and ICF/IID Surveillance report.

- Utilization by payor source is as follows:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid	81.18%	78%	75%
Medicare	10.46%	14%	14%
Commercial & Private Pay	<u>8.36%</u>	<u>8%</u>	<u>11%</u>
Total	100.00%	100%	100%

- Breakeven utilization is projected at 96.95 and 93.68% for the first and third years, respectively.

#### Capability and Feasibility

The originally purchase price for the operating assets was \$1,875,000; however, due to the bed reduction the purchase price was revised to \$0. Concurrently, Ross Realty Acquisition, LLC, will purchase the real property for \$15,000,000 funded by \$3,000,000 in members' equity and a loan at the above stated terms. Greystone Funding Corporation has provided a letter of interest. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,220,048 based on two months of first year expenses. Funding will be as follows: \$1,110,024 from the members' equity with the remaining \$1,110,024 satisfied through a five-year loan at 6% interest rate. Greystone Funding Corporation has provided a letter of interest.

BFA Attachments A and B, proposed members' net worth summaries for the operating and realty entities, respectively, reveals sufficient resources to meet equity requirements overall. However, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Proposed realty members Bent Philipson (on behalf of Philipson Family LLC) and Benjamin Landa have provided affidavits stating they are willing to contribute resources to the operating entity to the extent required, as well as any needed equity to the realty entity, disproportionate to their membership interest in Ross Realty Acquisition, LLC. Further, Mr. Philipson and Mr. Landa have submitted affidavits stating that they recognize that any debt guarantee or equity payment made as part of this project does not grant them ownership interest in the operating entity, and it is understood that no operational control can be gained or exerted as a result of such arrangement.

The submitted budget projects net income of \$282,209 and \$836,188 in the first year and third years, respectively. Revenues are expected to increase by approximately \$840,023 concurrent with a slight decrease in overall utilization. It is expected that there will be an approximately 3% shift from Medicaid utilization to Medicare while maintaining the current Medicare rate. Expenses are projected to increase by \$44,267 in Year One. The budget was determined taking into consideration the proposed new owners' experience in operating similar-sized facilities. BFA Attachment D is Ross Acquisition, LLC d/b/a Ross Center for Nursing and Rehabilitation's pro forma balance sheet, which shows the entity will start with \$1,160,789 in equity (including a small amount of equipment/inventory). 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 E, financial summary of Ross Health Care Center, indicates that the facility has a negative working capital position, a negative equity position and generated an average operating loss of \$415,768 for the 2013-2015 period. BFA Attachment F, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income, positive working capital and positive net assets. Peninsula Nursing and Rehabilitation Center's working capital position turned positive in 2015 on \$1,785,655 operating net income. Seagate Rehabilitation and Nursing Center, which was acquired December 11, 2014, incurred a negative working capital position, but generated an operating surplus of \$2,932,562 as of October 31, 2015 (internal financial statements). The Pavilion at

Queens for Rehabilitation and Nursing, which was acquired December 5, 2014, had a negative working capital position due to a short-term loan to a related party, but generated an operating surplus of \$6,024,857 as of November 30, 2015 (internal financial statements).

Based on the preceding, 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	Ross Acquisition, LLC members' net worth summaries
BFA Attachment B	Ross Realty Acquisition, LLC members' net worth summaries
BFA Attachment C	Current and Proposed Ownership of Real Property
BFA Attachment D	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation pro forma balance sheet
BFA Attachment E	Financial Summary, Ross Health Care Center
BFA Attachment F	Proposed members' ownership interest and Financial Summaries of Affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 151054-E**  
**River Valley Operating Associates, LLC**  
**d/b/a The Grand Rehabilitation and Nursing at River Valley**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Dutchess  
**Acknowledged:** February 18, 2015

**Executive Summary**

**Description**

River Valley Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at River Valley, a New York limited liability company, requests approval to be established as the operator of River Valley Care Center, Inc., a 160-bed Article 28 residential healthcare facility (RHCF) located at 140 Main Street, Poughkeepsie (Dutchess County). The RHCF also operates a 30-slot adult day health care program (ADHCP) at the same location. There will be no change in beds or services provided.

On September 15, 2014, the current operator of the RHCF, River Valley Care Center, Inc., entered into an Asset Purchase Agreement with River Valley Operating Associates, LLC for the sale and acquisition of the operating interests of River Valley Care Center, Inc., to be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). The real estate ownership will not change.

The current and proposed operators are as follows:

Current Operator	
River Valley Care Center, Inc.	
Shareholders	%
Moshe Kalter	50%
Aaron Fogel	30%
Frady Kalter	10%
Esther Kalter	10%

Proposed Operator	
River Valley Operating Associates, LLC	
Members	%
Strauss Ventures, LLC	94%
Jeremy Strauss	(95%)
Meryl Strauss	( 5%)
Jonathan Strauss	3%
Dan Muskin	3%

Jeremy Strauss has ownership interest in 16 RHCFs located throughout New York State. BFA Attachment D is the financial summaries, percent ownership interest, facility bed count and location of the various skilled nursing facilities in which Jeremy Strauss has an ownership interest.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This application will not result in a change to beds or services. River Valley Care Center's occupancy was 84.1% in 2012, 84.8% in 2013, and 87.4% in 2014. Current occupancy, as of February 20, 2016 is 99.4%, with one vacant bed.



### Program Summary

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System (The Grand). The Grand is a related party in that proposed member Jeremy Strauss is CEO a 95% owner and proposed member Meryl Strauss has the remaining 5% ownership interest.

### Financial Summary

The purchase price for the acquisition of the operating interests of River Valley Care Center, Inc. is \$1,000,000 plus the assumption of liabilities. The applicant has already paid the \$1,000,000 toward the purchase. The projected budget is as follows:

Revenues	\$14,341,423
Expenses	<u>14,229,868</u>
Net Income	\$111,555

## 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
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 the proposed Administrative and Consulting Services Agreement between the facility and The Grand Healthcare System. [LTC]
6. Submission of a photocopy of the applicant's executed Certificate of Amendment of Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Assignment and Assumption of F.H.A. Replacement Reserve, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

## Project Description

River Valley Operating Associates, LLC, doing business as The Grand Rehabilitation and Nursing at River Valley, seeks approval to become the established operator of River Valley Care Center, a 160-bed Article 28 residential health care facility (RHCF) with 30 adult day health care slots, located at 140 Main Street, Poughkeepsie, 12601, in Dutchess County.

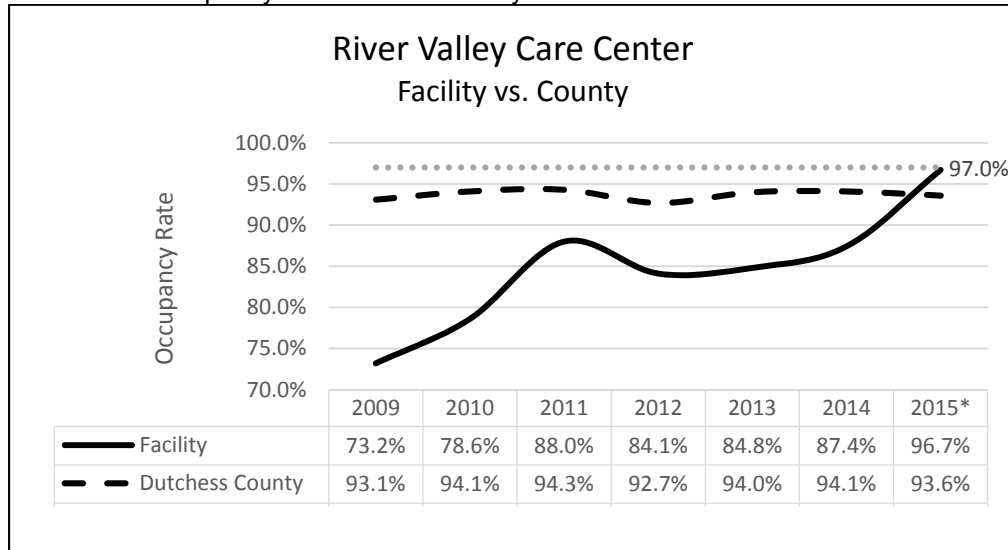
## Analysis

The need methodology indicates a surplus of 23 beds in Dutchess County as indicated in the table below:

### RHCF Need – Dutchess County

<b>2016 Projected Need</b>	1,903
<b>Current Beds</b>	1,926
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	1,926
<b>Unmet Need</b>	-23

The overall occupancy for Dutchess County is 94.1% for 2014 as indicated in the following chart:



\*unaudited, based on weekly census

The applicant attributes low occupancy at the facility prior to 2015 to ineffective management and systemic operational deficiencies. The current operator contracted with one of the proposed operators for operational consulting services beginning October 1, 2014.

## 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.

River Valley Care Center's Medicaid admissions for 2012 and 2013 are 54.4% and 58.8%, respectively. This facility exceeded Dutchess County 75% rates in 2012 and 2013 of 18.9% and 19.5%, respectively.

**Conclusion**

Approval of this application will result in maintaining a needed resource for the Medicaid population in the community.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<h2>Program Analysis</h2>
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**Facility Information**

	Existing	Proposed
Facility Name	River Valley Care Center	The Grand Rehabilitation and Nursing at River Valley
Address	140 Main St Poughkeepsie, New York 12601	Same
RHCF Capacity	160	Same
ADHC Program Capacity	30	Same
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	River Valley Care Center Inc	River Valley Operating Associates LLC  <u>Members</u> Strauss Ventures, LLC      94% Jeremy Strauss* (95%) Meryl Strauss      ( 5%) Jonathan Strauss            3% Daniel Muskin                3%  *Managing Member

**Facilities Reviewed**

Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to present
Brooklyn Center for Rehabilitation & Residential Care	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	02/2006 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center Rehabilitation & Extended Care Facility	11/2014 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present

The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015

Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
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Individual Background Review  
Current ownership is shown in brackets.

**Jeremy B. Strauss** discloses employment as Executive Director of Dutchess Center for Rehabilitation since 2003. He is also the CEO of The Grand HealthCare System. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation [2%]	05/2011 to present
Brooklyn Center for Rehabilitation & Residential HealthCare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	08/2004 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center Rehabilitation & Extended Care Facility [9%]	11/2014 to present
Holliswood Center for Rehabilitation [7.5%]	05/2013 to present
Queens Center for Rehabilitation [47%]	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare [29%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [24%] (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [24%] (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Washington Center Adult Home (AH) [30%]	02/2014 to present
Senior Care Emergency Ambulance Services, Inc. [23%]	05/2005 to present

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. Ms. Strauss does not disclose health facility interests at the time of this filing.

**Jonathan Strauss** discloses employment as Vice President of The Grand HealthCare System and has been employed in healthcare since 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation [2%]	11/2015 to present
Queens Center for Rehabilitation [2.5%]	10/2015 to present

**Daniel Muskin** is a nursing home administrator in good standing in New York State. Mr. Muskin has been employed as Administrator at Queens Center for Rehabilitation & Health Care since July, 1997. Mr. Muskin does not disclose any health facility interests at the time of this filing.

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

A review of operations of Guilderland Center Rehabilitation & Extended Care Facility for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
  - A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
  - A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The enforcements above occurred shortly after Mr. Struass came onto the existing ownership structure at 9% in an attempt to help stabilize the facility and in conjunction with filing a full CON to introduce a new ownership group.*

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b)

Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.

- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.*

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, and Steuben Center for Rehabilitation and Healthcare for the time periods indicated above reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.



## Project Review

This application proposes to establish River Valley Operating Associates, LLC as the new operator of River Valley Care Center. The facility will be operated as The Grand Rehabilitation and Nursing at River Valley. No changes in the program or physical environment are proposed in this application.

Strauss Ventures, LLC was formed for the purpose of representing Jeremy and Meryl Strauss' ownership interest in healthcare related entities.

Jeremy Strauss is CEO and 95% owner of The Grand Healthcare System (The Grand), which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. Meryl Strauss owns the remaining 5% of the Grand. It is the intent of the proposed operators to contract with The Grand for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that The Grand does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by The Grand.

Guiderland Center Rehabilitation & Extended Care Facility (Guiderland Center) was designated as a CMS Special Focus Facility in July of 2015 based on a poor surveillance history. In October of 2014 Jeremy Strauss came into the existing ownership structure at 9% as allowed under PHL 2801a-(4)(b)(ii). Mr. Strauss became a member of the operating LLC, instead of a consultant, in order to have decision making power and authority over operations at the facility. He became active in facility operations in May of 2015 to help stabilize the facility and bring in additional resources, including consulting services from The Grand Healthcare System. In response to the Special Focus designation Mr. Strauss instituted numerous changes at the facility. These changes include but were not limited to: replacement of the administrator and director of nursing; replacement of the clinical staff; replacement of the RN Unit managers; and hired additional full time staff such as a staff educator, QAPI nurse, housekeeping director, maintenance director, and MDS coordinators. He also invested \$2.2 million to address conditions at the facility. This included: installing a state of the art wander guard and resident monitoring system; installing security cameras; new rehabilitation room; renovated resident common areas; replaced resident beds; replaced lighting throughout the building; and installed TVs and phones at each resident bedside. Mr. Strauss has submitted CON#151090 to establish a new ownership group at the facility which will make him the primary and managing member.

## 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 for approval 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 asset purchase agreement for the purchase of the operations of River Valley Care Center, Inc., to be effectuated upon PHHPC approval of this CON application, as summarized below:

Date:	September 15, 2014 (Execution Date) / October 1, 2014 (Effective Date)
Seller:	River Valley Care Center, Inc.
Purchaser:	River Valley Operating Associates, LLC
Assets Acquired:	All inventory and supplies owned by Seller and used/held at the Facility; contracts, agreements, leases, undertakings, commitments and other arrangements; the name "River Valley Care Center" and all other trade names, logos, trademarks and service marks associated with the Facility; all menus, policies and procedure manuals and computer software; copies of all financial books/records in the possession of Seller relating to the Facility; copies of all resident/patient records; Seller's Medicare and Medicaid provider numbers and provider agreements for the facility; all accounts receivable, regardless of when billed, relating to services rendered by the Facility on and after the Effective Date; the lease and all cash, deposits and cash equivalents attributable to the operation of the Facility on and after the Effective Date.
Excluded Assets:	All cash, deposits, cash equivalents, short term investments attributable to the operation of the Facility prior to the Effective Date; all accounts receivable, regardless of when billed, relating to services rendered by the Facility prior to the Effective Date; all marketable securities and accrued interest/dividends as of the Effective Date, all insurance policies and Seller's rights under insurance policies, all tax credits, refunds, recovering and similar benefits of Seller relating to the Pre-Signing Tax Period and all personnel property of Seller, other than the inventory and supplies.
Assumed Liabilities:	Purchaser shall assume at the Closing all liabilities and obligations arising on and after the Effective Date with respect to the ownership and/or operation of the Facility and/or the Basic Assets on and after the Effective Date including, but not limited to, the Assumed Healthcare Program Liabilities, and taxes apportioned to Buyer and all liabilities for taxes for taxable periods commencing on or after the Effective Date relating to the real estate, the Seller's obligations with respect to the Buyer Employees to the extent assumed by Buyer and all liabilities for all environmental conditions.
Purchase Price:	\$1,000,000 plus the assumption of liabilities.
Payment of Purchase Price:	The purchaser has already paid the \$1,000,000 toward the purchase price.

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. Currently, the facility has no outstanding Medicaid assessments or liabilities.

Lease Rental Agreement

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

Premises:	The site located at 140 Main Street, Poughkeepsie, New York.
Lessor:	River Valley Realty Co. L.P.
Lessee:	River Valley Operating Associates, LLC
Term:	10 years
Rental:	Years 1-5: Annual rent of \$1,000,000 Years 6-10: Annual rent of \$1,250,000
Provisions:	Lessee shall be responsible for real estate taxes, maintenance and utilities.

The lease agreement is an arm's length lease arrangement.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the current year and year one subsequent to change of ownership, summarized as follows:

<b>RHCF</b>	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid MC	\$235.93	\$10,424,929	\$206.01	\$10,083,799
Medicare FFS	\$512.83	2,421,604	\$552.65	2,957,234
Private Pay	\$296.65	<u>628,304</u>	\$291.57	<u>685,199</u>
Total Revenues		\$13,474,837		\$13,726,232
<u>Expenses</u>				
Operating	\$283.21	\$14,451,184	\$216.52	\$12,265,186
Capital	<u>\$22.28</u>	<u>1,137,038</u>	<u>18.89</u>	<u>1,070,171</u>
Total Expenses	\$305.49	\$15,588,222	\$235.41	\$13,335,357
Net Income		<u>(\$2,113,385)</u>		<u>\$390,875</u>
Utilization (Pt Days)		51,027		56,648
Occupancy		87.38%		97.00%

Utilization by payor source for the RHCF beds for 2014 and the first year after the change in operator is as follows:

<u>Payor</u>	<u>Current (2014)</u>	<u>Year One</u>
Medicaid MC	86.40%	86.40%
Medicare FFS	9.45%	9.45%
Private Pay	4.15%	4.15%

The operating budget for the 30-slot ADHCP is as follows:

<b>ADHCP</b>	<u>Current (2014)</u>	<u>Year One</u>
Revenues	\$414,000	\$615,191
Expenses	<u>972,555</u>	<u>894,511</u>
Net Income	(\$558,535)	(\$279,320)
Utilization (Visits)	5,302	7,566
Cost Per Visit	\$183.43	\$118.23

The ADHCP visits were 100% Medicaid in 2014 and will be 100% Medicaid during the first and third year after the change in ownership.

The combined revenues and expenses for the RHCF and ADHCP services are as follows:

<u>Combined</u>	<u>Current (2014)</u>	<u>Year One</u>
Revenues	\$13,888,857	\$14,341,423
Expenses	16,560,777	14,229,868
Net Income	(\$2,671,920)	\$111,555

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's historical rate data by payor, as the applicant anticipates these rates will be held for a period of time going forward. 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.
- Expense assumptions are based on the facility's prior year expenses, taking into consideration the following projected expense reductions:
  - Salary and related employee benefits expenses are being reduced by \$1,223,960 and \$511,901, respectively, related to a reduction in FTEs. Aides/Orderlies will decrease by 17.8 FTEs, RNs will decrease by 6.0 FTEs, and environmental/food service staff will decrease by 10.3 FTEs. The staffing reductions are mitigated by an increase in FTEs for other direct care staff, including the addition of 1.5 FTEs for PT, 2 FTEs for OT, and 1 FTE for Speech Therapy.
  - Professional fees are being reduced by \$91,050.
  - Medical & surgical supplies expenses are being reduced by \$48,499.
  - Non-surgical supplies will be reduced by \$107,308.
- Utilization is projected to increase to 97% during the first year after the change in operator. The facility achieved occupancy of 84.8% in 2013 and 87.38% in 2014. The applicant indicated that the increase from 2013 to 2014 was attributable to the operational consulting services of Jeremy Strauss which began on October 1, 2014. Upon approval of the new operator, Jeremy Strauss will have an active role as a managing member of the facility and will ensure that the operational changes implemented to date that resulted in the increase in occupancy will continue going forward.
- Breakeven occupancy is 96.0% (56,064 nursing facility patient days).
- The facility is projecting to improve operations of the ADHCP via an increase in ADHCP visits.

#### Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$1,000,000 plus the assumption of liabilities. The applicant has already paid the \$1,000,000 toward the purchase.

Working capital requirements are estimated at \$2,356,056, which appears reasonable based on two months of first year expenses. The applicant will finance \$1,178,028 at an interest rate of 5% for a five-year term. The applicant submitted a letter of interest in regard to the financing. The remaining \$1,178,028 will be met via equity from the proposed members. BFA Attachment A is the personal net worth statements of the proposed members of River Valley Operating Associates, LLC, which indicates the availability of sufficient funds to meet the working capital equity requirement. Jeremy Strauss provided an affidavit stating that he will contribute equity disproportionate to his ownership interest for the working capital portion. BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$2,178,028. Assets include \$816,521 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a positive \$1,361,507.

The submitted budget projects a net income of \$111,555 during the first year after the change in operator. The applicant indicated their business model includes flexibility to transition to a Value Based Payment System prior to 2020, however their budget revenue assumptions were based on the facility's historical experience, as they anticipate the various payor rates will continue for a period of time going forward. Projected utilization by payor conforms to historical experience. 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.

BFA Attachment B is the financial summary of River Valley Care Center, Inc. from 2012 through 2014. As shown, the entity had an average positive working capital position and an average negative net asset position from 2012 through 2014. Also, the entity incurred average net losses of \$3,426,999 from 2012 through 2014. The applicant indicated that the reason for the losses from 2012 through 2014 were the result of low occupancy. The low occupancy was attributed to the poor ratings in quality measures due to a number of survey deficiencies the facility received. To improve operations, the facility corrected all deficiencies and sought out services from a consulting firm, which began on October 1, 2014. Since the consulting firm's involvement, the applicant indicated that facility has seen an increase in occupancy up to 97.5% through June 30, 2015.

BFA Attachment E is the internal financial statements of River Valley Care Center as of September 30, 2015. As shown, the entity had a positive working capital position and a negative net asset position for the period. Also, the entity incurred a loss from operations of \$1,518,124 through September 30, 2015.

BFA Attachment D is the 2012-2014 financial summaries of Jeremy Strauss' affiliated nursing homes. As shown, the facilities have maintained a positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of Queens Center for Rehabilitation, Dutchess Center, Bushwick Center, Chittenango Center and Richmond Center, which had negative working capital positions due to vacation and sick time accruals and pending CMI adjustments. Financial statements for Washington Center for Rehabilitation, Essex Center for Rehabilitation, Steuben Center for Rehabilitation and Guilderland Center Rehabilitation and Extended Care are not available as the facilities were newly acquired in 2014.

Subject to the noted contingency, 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	Personal net worth statement - proposed members
BFA Attachment B	Financial Summary - River Valley Care Center, Inc.
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Affiliated nursing facilities of proposed member Jeremy Strauss
BFA Attachment E	September 30, 2015 internal financial statements of River Valley Care Center
BNHLC Attachment A	Quality Measures and Inspection Report



Project # 151090-E  
 Guilderland Operator, LLC  
 d/b/a The Grand Rehabilitation and Nursing at Guilderland

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Albany  
**Acknowledged:** March 5, 2015

**Executive Summary**

**Description**

Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at Guilderland, a New York State limited liability company, seeks approval to be established as the operator of Guilderland Center Rehabilitation and Extended Care Facility, a 127-bed Article 28 residential health care facility (RHCF) located at 428 Rte. 146, Guilderland Center (Albany County). The facility is currently operated by Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC. There will be no change in services provided.

On October 21, 2013, the current operator of the RHCF entered into an Operations Purchase and Transfer Agreement (OPTA) with Guilderland Operator, LLC for the sale and acquisition of the operating interests of the facility, upon approval by the Public Health and Health Planning Council.

Ownership of the facility before and after the requested change are as follows:

<u>Current Operator</u>	
Guilderland Ctr Rehabilitation and Extended Care Facility Operating Company, LLC	
<u>Members</u>	<u>%</u>
Aaron Seligson	30.34%
Martin Rothman	30.33%
Patricia Bruder	30.33%
Jeremy Strauss	9.00%

<u>Proposed Operator</u>	
Guilderland Operator, LLC	
<u>Members</u>	<u>%</u>
Jonathan Strauss	2.5%
Strauss Ventures, LLC	97.5%
Jeremy Strauss (95.0%)	
Meryl Strauss (5.0%)	

The purchase price for the operations is \$2,300,000 plus the assumption of liabilities due the Department of Health (DOH) as of the date of closing. The liabilities are being paid back on a monthly basis at the agreed upon rate of \$4,607 per month. Outstanding DOH liabilities totaled \$2,371,938 as of February 9, 2016.

In conjunction with the OPTA, Guilderland Realty Holdings Corp., the RHCF's real property owner, entered into a Real Estate Purchase Agreement (REPA) with 428 Route 146, LLC for the real property interests of the nursing facility. The purchase price for the real estate is \$1,913,720 based on the buyer paying off the Citizen's Bank mortgage associated with the property in the amount due as of the Closing Date, presently valued at \$1,649,989 as of March 1, 2016, and the assumption of real estate taxes in arrears for 2003, 2005, 2006, 2007 and 2008. The taxes in arrears are being paid back to the County of Albany on a monthly basis at the agreed upon rate of \$44,170.40 per month until July 2016, at which time the remaining balance plus accrued interest is to be paid. As of March 1, 2016, the outstanding tax balance due was \$263,731.

The closing of the REPA will be concurrent with the closing of the OPTA. The applicant will lease the premises from 428 Route 146, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the members of each company have previous business relationships involving real estate transactions of other nursing homes.

Jeremy Strauss and Jonathan Strauss have ownership interest in several New York State RHCFS. BFA Attachments D and E present the ownership interest and financial summaries of the members' affiliated skilled nursing facilities.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

This application will not result in a change to beds or services. Guilderland Center's occupancy was 94.5% in 2011, 89.9% in 2012, 88.4% in 2013 and 77.8% in 2014. In October 2014, the proposed managing member, Jeremy Strauss, became a 9% member of the current operator. As a result, additional marketing initiatives were implemented and the facility has become more engaged with hospital discharge planners and community resources. Occupancy increased to 95.2% 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 for approval as set forth in Public Health Law §2801-a(3).

#### Financial Summary

Guilderland Operator, LLC will acquire the operating interest in the RHCf for \$4,671,938 which will be financed as follows: \$725,000 from members' equity equal to their ownership percentage, a bank loan of \$1,575,000 at an interest rate of 5% for a 25-year term, and the assumption of approximately \$2,371,938 in DOH liabilities associated with the facility operations with a current monthly repayment rate of \$4,607.

428 Route 146, LLC will acquire the RHCf's real property for \$1,913,720 which will be financed as follows: \$263,731 from members' equity equal to their ownership percentage, plus the assumption of the current Citizens bank loan. The loan is valued at \$1,649,989 as of March 1, 2016, with a 7.7% interest rate and is scheduled to be paid off in May 2022.

There are no project costs associated with this proposal. The projected operating budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$6,647,872	\$8,675,231
Expenses	<u>\$8,313,112</u>	<u>\$8,334,188</u>
Gain/(Loss)	(\$1,693,151)	\$341,043

## 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a 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]
6. Submission of the proposed Administrative and Consulting Services Agreement between the facility and The Grand Healthcare System. [LTC]
7. Submission of a photocopy of the proposed and executed operating agreement of Strauss Ventures, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed proposed articles of organization of Strauss Ventures, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's certificate of assumed name filed with the State of New York, which is acceptable to the Department. [CSL]



**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

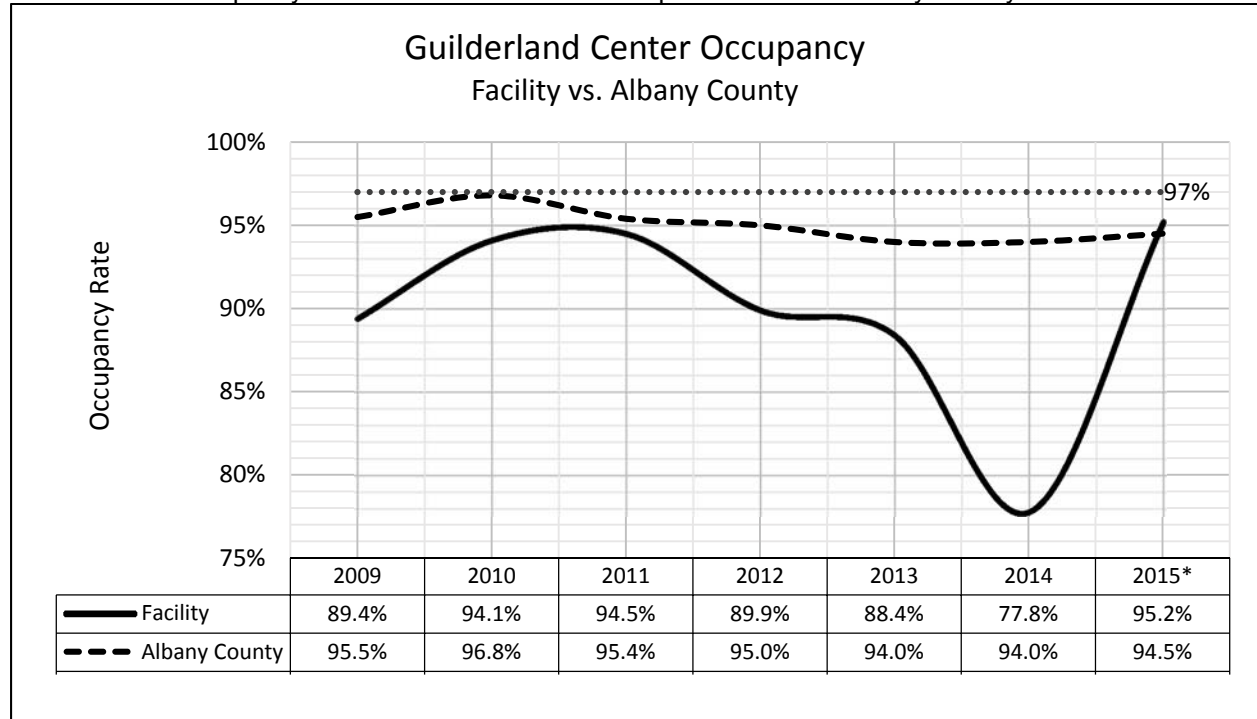
## Analysis

There is currently a need for 25 beds in Albany County as indicated in the table below:

### RHCF Need – Albany County

2016 Projected Need	1,844
Current Beds	1,819
Beds Under Construction	0
Total Resources	1,819
Unmet Need	25

The historical occupancy for Guilderland Center is compared to that of Albany County in the chart below:



*\*unaudited; facility reported data*

The applicant attributes the low occupancy during 2012 - 2014 to ineffective management and systematic deficiencies. In October 2014, the proposed managing member, Jeremy Strauss, became a 9% member of the current operator. As a result, additional marketing initiatives were implemented and the facility has become more engaged with hospital discharge planners and community resources. Occupancy increased to 95.2% in 2015.

In addition to the new marketing initiatives and increased engagement with hospital discharge planners and community resources, new programs are being implemented to serve higher acuity residents while also preventing avoidable hospital admissions and readmissions. New programs include: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy and complex clinical care services.

The following physical improvements have been made to the facility: 80 new electric beds, updated, state of the art rehabilitation room and flooring replacement of carpet in resident hallways. Staff competencies were assessed and where indicated, incompetent staff were terminated and replaced as appropriate. The following improvements are in process or will be created: installation of direct dial telephones, flat-screen televisions and furniture in resident rooms, upgrade of call bell system and replacement of dining

room furniture and equipment. The facility has hosted visits with hospital discharge planners from area hospitals to provide the opportunity to observe changes at the facility.

**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.

Guilderland Center’s Medicaid admissions for 2012 and 2013 are 14.8% and 14.7%, respectively. This facility exceeded the Albany County 75% rates in 2012 and 2013 of 10.7% and 11.3%, respectively.

**Conclusion**

Contingent approval of this application will result in the continuation of a needed resource for the residents of Albany county.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

**Program Analysis**

**Program Description**

This application proposes to establish Guilderland Operator, LLC as the new operator of Guilderland Center Rehabilitation & Extended Care Facility. The facility will be operated as The Grand Rehabilitation and Nursing at Guilderland. No changes in the program or physical environment are proposed in this application.

	Existing	Proposed
Facility Name	Guilderland Center Rehabilitation & Extended Care Facility	The Grand Rehabilitation and Nursing at Guilderland
Address	428 Route 146 Guilderland Center, NY 12085	Same
RHCF Capacity	127	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Guilderland Center Rehabilitation and Extended Care Facility Operating Co., LLC  <u>Current Members</u> Aaron Seligson           30.33% Martin Rothman           30.33% Patricia Bruder           30.33% Jeremy Strauss <u>9.00%</u> 100.00%	Guilderland Operator, LLC  <u>Members</u> Strauss Ventures, LLC    97.5% *Jeremy Strauss        95% Meryl Strauss        5% Jonathan Strauss           2.5%  *Managing Member

## Facilities Reviewed

### Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to present
Brooklyn Center for Rehabilitation & Residential Care	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	02/2006 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center	11/2014 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015

### Adult Home (AH)

Washington Center Adult Home	02/2014 to present
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### Ambulance Company (EMS)

Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
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## Individual Background Review

Jeremy B. Strauss discloses employment as Executive Director of Dutchess Center for Rehabilitation since 2003. He is also the CEO of The Grand HealthCare System. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation [2%]	05/2011 to present
Brooklyn Center for Rehabilitation & Residential HealthCare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	08/2004 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center	11/2014 to present
Holliswood Center for Rehabilitation [7.5%]	05/2013 to present
Queens Center for Rehabilitation [47%]	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare [29%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [24%] (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [24%] (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Washington Center Adult Home (AH) [30%]	02/2014 to present
Senior Care Emergency Ambulance Services, Inc. [23%]	05/2005 to present

Meryl Strauss discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. Ms. Strauss does not disclose health facility interests at the time of this filing.

Jonathan Strauss discloses employment as Vice President of The Grand HealthCare System and has been employed in healthcare since 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation [2%]	11/2015 to present
Queens Center for Rehabilitation [2.5%]	10/2015 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Guilderland Center Rehabilitation & Extended Care Facility for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
  - A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
  - A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, and Steuben Center for Rehabilitation and Healthcare for the time periods indicated above reveals that there were no enforcements.

Senior Care Emergency Ambulance Services, Inc.  
Washington Center Adult Home

## Project Review

This application proposes to establish Guilderland Operator, LLC as the new operator of Guilderland Center Rehabilitation & Extended Care Facility. The facility will be operated as The Grand Rehabilitation and Nursing at Guilderland. No changes in the program or physical environment are proposed in this application.

Jeremy Strauss is CEO and 95% owner of The Grand Healthcare System (The Grand), which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. The current operator contracts with The Grand and it is the intent of the proposed operator to continue to contract with The Grand for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that The Grand does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by The Grand.

Jeremy Strauss came onto the existing ownership structure of Guilderland Center in October of 2014 as a 9% member as allowed under PHL 2801a-(4)(b)(ii). Coming in as a member of the operating LLC, instead of as a consultant, allowed Mr. Strauss to have decision making power and authority over operations at the facility. He became active in facility operations in May of 2015 and started initiating modifications to bring about positive institutional change. In July of 2015 the facility was designated Special Focus Program based on a poor surveillance history from previous years. Mr. Strauss continued to initiate change at the facility in order to address the Special Focus designation. These changes include but were not limited to: replacement of the administrator and director of nursing; replacement of the clinical staff; replacement of the RN Unit managers; and hired additional full time staff such as a staff educator, QAPI nurse, housekeeping director, maintenance director, and MDS coordinators. He invested \$2.2 million to address conditions at the facility. This included: installing a state of the art wander guard and resident monitoring system; installing security cameras; new rehabilitation room; renovated resident common areas; replaced resident beds; replaced lighting throughout the building; and installed TVs and phones at each resident bedside.

## 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 for approval as set forth in Public Health Law §2801-a(3).

## Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Operations Purchase and Transfer Agreement

The applicant has submitted an executed Operations Purchase and Transfer Agreement to acquire the operating interests of the RHCF. The agreement will become effective upon final PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	October 21, 2013
Transferor/Seller:	Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC
Transferee/Purchaser:	Guilderland Operator, LLC
Purchased Assets:	All tangible assets, inventory and supplies, telephone, fax numbers, websites domain names, manufactures' and vendors' warranties, seller's rights in any agreements, business trade names, service/trademarks and logos, seller's book and records, seller's licenses, certificates and approvals to do business, resident funds held in trust in connection with the nursing home and all petty cash related to the nursing home, Medicaid and Medicare provider numbers and all goodwill and going concern values.
Excluded Assets:	All of the seller's cash, cash equivalents, bank deposits or similar cash items (other than petty cash), accounts receivable generated prior to the closing date, any rights to refunds, settlements, government grants, marketable securities and retroactive adjustments for periods ending on or prior to the closing date
Liabilities Assumed (Operations)	DOH liabilities estimated at \$2,371,938 as of February 9, 2016
Excluded Liabilities (Operations):	N/A
Purchase Price	\$2,300,000 cash plus assumption of DOH liabilities at amount stated above. (Purchase Price w/DOH liabilities as of February 9, 2016 = \$4,671,938)
Payment of Purchase Price:	\$200,000 at contract signing (held in escrow), \$2,100,000 cash due at closing plus the assumption of DOH liabilities due as of closing date.

The purchase price of the operations is proposed to be satisfied as follows:

Cash	\$725,000
Bank Loan (25 years at 5% interest)	\$1,575,000
Assumption of DOH Liability Repayment (payable at \$4,607 per month)	<u>\$2,371,938</u>
Total	<u>\$4,671,938</u>

BFA Attachment A is the net worth statement for the proposed owners, which shows sufficient resources to cover both the purchase price and the working capital equity requirements for this project.

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 outstanding Medicaid liabilities totaling \$2,371,938 as of February 9, 2016.



Real Estate

The applicant has submitted an executed Real Estate Purchase Agreement related to the acquisition of the real property interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	October 21, 2013
Seller:	Guilderland Realty Holdings Corp.
Purchaser:	428 Route 146, LLC
Purchased Assets:	Seller's right, title and interest in all of the tangible and intangible assets associated with or used by the facility in the operations of the nursing home and located at 428 Route 146, Guilderland Center, NY.
Excluded Assets:	N/A
Liabilities Assumed:	Guilderland Realty's Citizens Bank loan and assumption of the facilities 2003 and 2005-2008 real estate taxes in arrears.
Excluded Liabilities:	N/A
Purchase Price:	\$1,913,720 based on the following: <ul style="list-style-type: none"> <li>• Transfer of Guilderland Realty's Citizen Bank loan, which is \$1,649,989 as of March 1, 2016; and</li> <li>• Assumption of the 2003 and 2005-2008 real estate tax arrears, which is \$263,731 as of March 1, 2016.</li> </ul>
Payment of Purchase Price:	Due at closing

The purchase price for the RHCF realty is proposed to be satisfied as follows:

Equity from members	\$263,731
Citizens Bank Loan (7.7% interest, principal to be paid off May 2022)	\$1,649,989
Total	\$1,913,720

Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized as follows:

Date:	September 11, 2014
Premises:	A 127-bed RHCF located at 428 Route 146, Guilderland Center, NY
Lessor:	428 Route 146, LLC
Lessee:	Guilderland Operator, LLC
Term:	10 years
Rental:	\$850,000 per yr. (\$70,833.33 per month)
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)

The applicant indicated the lease arrangement is an arm's length agreement; however, the applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the members of each company have previous business relationships involving real estate transactions of other nursing homes. Letters from two NYS realtors have been provided attesting to the reasonableness of the per square foot rental.

## Operating Budget

The applicant has provided an operating budget, which is reasonable, in 2016 dollars, for the current year and year one subsequent to the change in ownership, summarized below:

	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<b>Revenues:</b>				
Medicaid FFS	\$149	\$4,365,660	\$146	\$5,304,930
Medicare FFS	\$424	\$1,085,836	\$441	\$1,409,432
Medicare MC	\$336	\$175,806	\$441	\$491,139
Commercial FFS	\$353	\$648,687	\$372	\$600,601
Private Pay	\$181	\$343,972	\$336	\$869,129
Other Op Revenue		\$27,911		<u>(\$27,911)</u>
<b>Total</b>		<b>\$6,647,872</b>		<b>\$8,650,996</b>
<b>Expenses:</b>				
Operating	\$216	\$7,771,772	\$164	\$7,366,981
Capital	<u>\$15</u>	<u>\$541,340</u>	<u>\$22</u>	<u>\$967,207</u>
<b>Total</b>	<b>\$231</b>	<b>\$8,313,112</b>	<b>\$186</b>	<b>\$8,334,188</b>
<b>Net income/loss</b>		<b><u>(\$1,693,151)</u></b>		<b><u>\$316,808</u></b>
<b>Utilization (days)</b>				
Occupancy		77.8%		97.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates. For Medicaid, the rate is based on the current operator's 2015 Medicaid Regional Pricing rate, which is applicable for Medicaid Managed Care payments during the transition period. The rates for all other payors were determined based on the facility's average 2014 per diem payment rates for the respective payors.
- Expense assumptions are based on the historical experience of the current operator.
- Utilization assumptions are based on the facility's current 2015 occupancy rates. The applicant indicated that occupancy was at 94.96 % as of 9/30/2015.
- Utilization by payor source is expected as follows for year one:
 

Medicaid Fee-For-Service	81.09%
Medicare Fee-For-Service	7.10%
Medicare Managed Care	1.45%
Commercial Fee-For-Service	5.10%
Private Pay	5.26%
- Breakeven utilization is projected at approximately 93.4% for Year One.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$4,671,938 for operations will be met as shown above. Concurrently, 428 Route 146, LLC, will purchase the real property for \$1,913,720 will be funded as shown above.

Working capital requirements are estimated at \$1,389,031 based on two months of year one expenses, of which \$703,546 will be satisfied from the proposed members' equity and \$685,485 will be financed by a working capital loan at 5% interest for five years. Greystone has provided a letter of interest for the proposed working capital financing. BFA Attachment A is the net worth statement for the proposed owners of the RHCF, which shows sufficient resources available to cover the purchase price and working capital equity requirements for this project.

BFA Attachment B is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,003,546. It is noted that assets include \$2,300,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity position of \$703,546.

The submitted budget projects a net income of \$316,808 in Year One after the change in operator. The budget is reasonable.

The applicant states that their business model does not include flexibility to transition to a Value Based Payment System, as the timeframe for the implementation of a Value Based payment system remains uncertain. Therefore, 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 Medicaid NH revenues through the transition period.

BFA Attachment C is the 2013 and 2014 certified and the 1/1/2015-9/30/2015 internal financial statements for Guilderland Center Rehabilitation and Extended Care Facility. The facility generated an average operating loss of \$991,595, and had both average negative net asset and working capital positions. The applicant indicated that the losses for 2013 and 2014 were due to low occupancy rates attributable to ineffective management and systemic deficiencies. In order to turn this around, the facility implemented new marketing initiatives and increased their engagement with hospital discharge planners and community resources. The facility has also implemented new programs in order to serve higher acuity residents and has focused on reducing preventable/avoidable hospital admissions and readmissions. The impact of the new initiatives can be seen in 2015, with the significant reduction in net losses, the working capital loss increase is due to the overall cost of implementing the new initiatives.

BFA Attachment E is the financial summaries of the members' affiliated nursing homes, which shows that the facilities have maintained a positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of Queens Center for Rehabilitation and Bushwick Center, which had negative working capital positions due to vacation and sick time accruals and pending CMI adjustments.

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	Net Worth of Proposed Members of Guilderland
BFA Attachment B	Pro-forma Balance Sheets for Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at Guilderland
BFA Attachment C	2013 and 2014 certified and 1/1/2015- 9/30/2015 internal financial statements for Guilderland Center Rehabilitation & Extended Care
BFA Attachment D	Ownership Interests of Mr. Jeremy and Mr. Jonathan Strauss's affiliated Nursing Homes
BFA Attachment E	Financial Summaries of Mr. Jeremy and Mr. Jonathan Strauss's affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 151260-E**  
**North Manor Operations Associates LLC**  
**d/b/a Nanuet Center for Rehabilitation and Nursing**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Rockland  
**Acknowledged:** June 4, 2015

**Executive Summary**

**Description**

Northern Manor Operations Associates, LLC d/b/a Nanuet Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Northern Manor Multicare Center, Inc., a 231-bed Article 28 residential healthcare facility (RHCF) located at 199 N. Middletown Road, Nanuet (Rockland County). The facility is certified for 203 RHCF beds, 28 Ventilator Dependent beds, and a 100-slot off-site adult day health care program (ADHCP) located at One Prospect Park West, Brooklyn (Kings County), which is also part of this change in ownership request. There will be no change in services provided.

On June 1, 2015, Northern Manor Multicare Center, Inc. entered into an Asset Purchase Agreement with North Manor Operations Associates, LLC for the sale and acquisition of the operating interests of the RHCF. In conjunction with the Asset Purchase Agreement, North Manor Realty Associates, LLC, whose sole member is Daryl Hagler, entered into a land sale contract with Northern Manor Multicare Center, Inc. for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from North Manor Realty Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and the tenant have previous business relationships involving real estate transactions of other nursing homes.

Northern Manor Multicare Center, Inc., a voluntary not-for-profit corporation, currently operates the RHCF and ADHCP. The proposed new operator is as follows:

<u>Proposed</u>		
North Manor Operations Associates, LLC		100%
<u>Members</u>		
Jeffrey Sicklick		1%
KR Northern Holding Co., LLC		99%
Kenneth Rozenberg	(95%)	
Beth Rozenberg	(5%)	

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

**Need Summary**  
Utilization has been consistently at or near the Department's planning optimum and is expected to continue going forward with the change in ownership.

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a

related party in that proposed member Kenneth Rozenberg is CEO and has a 50% ownership interest in Centers.

#### Financial Summary

The purchase price for the acquisition of the operating interests is \$18,126,692 and will be met with equity of \$4,539,173 from the proposed members' personal resources and a loan of \$13,587,519 at 5% interest for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if

refinancing is not available. The purchase price for the real estate interests is \$10,000,000 and will be met with a loan for \$9,900,000 at 5% interest for a ten-year term and 25-year amortization period, and a \$100,000 down payment of equity. Daryl Hagler has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available. The projected budget is as follows:

Revenues	\$35,133,252
Expenses	<u>31,781,418</u>
Net Income	\$ 3,351,834

## 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the real estate interests, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of completed and executed Operating Agreement of KR Northern Holding CO., LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

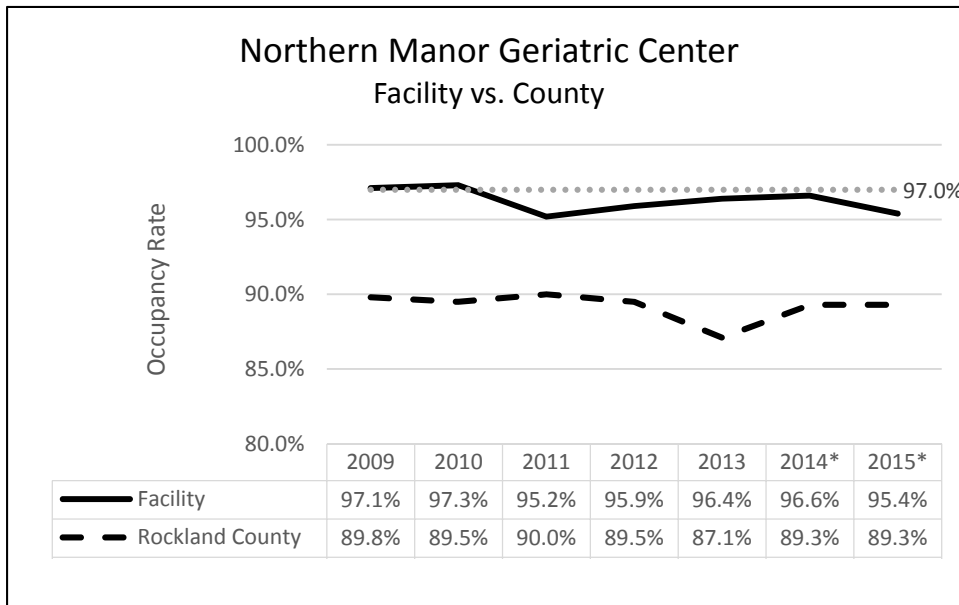
## Analysis

As calculated by the need need methodology, there is currently a surplus of one bed in Rockland County.

### RHCF Need – Rockland County

2016 Projected Need	1,635
Current Beds	1,676
Beds Under Construction	-40
Total Resources	1,636
Unmet Need	-1

The overall occupancy for Rockland County was 87.1% for 2013, as indicated in the following chart:



*\*unaudited; based off weekly census*

Current occupancy, as of June 10, 2015 is 96.1%, with 8 vacant beds. With the recent closing of Summit Park Nursing Care Center, Rockland County's current occupancy is 95.3%.

## 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.

Northern Manor Geriatric Center's Medicaid admissions for both 2012 and 2013 was 82.5% and 75.0%, respectively, which exceeded Rockland County 75% rates in 2012 and 2013 of 24.4% and 26.5%, respectively.



Conclusion

Approval of this application will result in preserving a needed resource for the Medicaid population and community it serves.

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	Northern Manor Geriatric Center	Nanuet Center for Rehabilitation and Nursing
Address	199 N Middletown Road Nanuet, New York 10954	Same
RHCF Capacity	231 (incl. 28 vent)	Same
ADHC Program Capacity	100	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Northern Manor Geriatric Center, Inc.	North Manor Operations Associates LLC  <u>Members</u> Jeffrey Sicklick 1% KR Northern Holding Co, LLC 99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care;	07/2008 to present
Stonehedge Health & Rehabilitation Center - Chittenango)	
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care;	07/2008 to present

Stonehedge Health & Rehabilitation Center - Rome)	02/2006 to present
University Nursing Home	02/2014 to present
Washington Center for Rehabilitation and Health Care	08/2011 to present
Waterfront Center for Rehabilitation and Health Center	02/2006 to present
Williamsbridge Manor Nursing Home	

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Home (AH)

Washington Center Adult Home	02/2014 to present
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Certified Home Health Agency (CHHA)

Alpine Home Health Care	07/2008 to present
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Licensed Home Care Services Agency (LHCSA)

Amazing Home Care	05/2006 to present
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Ambulance Company (EMS)

Senior Care Emergency Ambulance Services, Inc.	02/2006 to present
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Managed Long Term Care Company (MLTC)

Centers Plan for Health Living	01/2013 to present
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Individual Background Review

Current facility ownership % shown in brackets [ ].

Kenneth Rozenberg is a New York licensed nursing home administrator in good standing, and a licensed paramedic in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present

Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (RECeivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (REC) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

*Note: DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report.*

*Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.*

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Bufflalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present
Washington Center Adult Home (AH) [10%]	02/2014 to present

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
  - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
  - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
  - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Stueben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

#### Project Review

This application proposes to establish North Manor Operations Associates, LLC as the new operator of Northern Manor Geriatric Center. The facility will be operated as Nanuet Center for Rehabilitation and Nursing. The facility currently operates 231 RHCF beds, 28 of which are certified for ventilator dependent resident care. While located in Rockland County, the facility operates a 100 slot ADHCP program located in Brooklyn. It is the intent of the proposed operator to continue operation of the 100 slot ADHCP. No changes in the program or physical environment are proposed in this application.

The member LLC, KR Northern Holding Company, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Nanuet Center for Rehabilitation and Nursing (Northern Manor Geriatric Center), Monsey Center for Rehabilitation and Nursing (Northern Metropolitan Residential Health Care Facility), and Haverstraw Center for Rehabilitation and Nursing.

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operator to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for Kenneth Rozenberg to contract with Centers for the facilities in which he has ownership interest. He uses Centers as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities with which they contract.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the establishment of ownership.

#### 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 for approval 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:	June 1, 2015
Premises:	The RHCf located at 199 North Middletown Road, Nanuet, New York
Seller:	Northern Manor Multicare Center, Inc.
Purchaser:	North Manor Operations Associates, LLC
Assets Acquired:	Business and operation of the Facility except for Excluded Assets; all leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; all inventory, supplies and other articles of personal property; all transferable contracts, agreements, leases, undertakings, commitments and other arrangements; resident funds held in trust; the name "Northern Manor" and any other trade names, logos, trademarks and service marks associated with the Facility; all security deposits and prepayments, if any, for future services held by Seller; all menus, policies and procedures manuals and computer software; all telephone numbers and telefax numbers used by the Facility; copies of all financial books and records in the possession of Seller or its agents relating to the Facility; all resident/patient records relating to the Facility; all employee and payroll records, goodwill, Seller's Medicare and Medicaid provider numbers and provider agreements; all rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise, with respect to third party payments from any source; and all other assets of Seller relating to the Facility and its programs, howsoever designated or wherever located, including, but not limited to, cash, deposits, grant applications, grant awards and the right to use the Premises, other than the Excluded Assets as hereinafter defined.
Excluded Assets:	All union contracts, collective bargaining agreements and all pension plans and all rights and interests of Seller under and pursuant to this Agreement and any documents executed in connection with the Closing Date hereafter defined.
Assumed Liabilities:	The purchaser will assume the trade payables.
Purchase Price:	\$18,126,692
Payment of Purchase Price:	\$10,000 paid as down payment; \$18,116,692 due at Closing

The applicant's financing plan appears as follows:

Equity via proposed members	\$4,539,173
Loan (5% interest, ten-year term, 25-year amortization period)	\$13,587,519

BFA Attachment A is the net worth summary for the proposed members of North Manor Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.



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 Seller of its liability and responsibility. As of February 16, 2016, the facility had outstanding Medicaid liabilities totaling \$413,222 related to cash receipts assessment overpayments and OMIG audit rates and related interest.

#### Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	June 1, 2015
Premises:	The parcel of land located at 199 North Middletown Road, Nanuet, New York
Seller:	Northern Manor Multicare, Inc.
Purchaser:	North Manor Realty Associates, LLC
Purchase Price:	\$10,000,000
Payment of Purchase Price:	\$100,000 down payment paid; \$9,900,000 balance due at Closing.

The financing plan for the balance due on the real estate consist of a bank loan for \$9,900,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided. Daryl Hagler, who is the owner of the real estate entity, has indicated that he will refinance the loan when the balloon payment becomes due and has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available. BFA Attachment F is the personal net worth statement of Daryl Hagler, which indicates the availability of sufficient funds for the balloon payment if refinancing is not available.

#### Lease Rental Agreement (nursing home)

The applicant has submitted an executed lease rental agreement for the nursing home site they will occupy, which is summarized below:

Date:	June 1, 2015
Premises:	The site located at 199 North Middletown Road, Nanuet, New York
Lessor:	North Manor Realty Associates, LLC
Lessee:	North Manor Operations Associates, LLC
Term:	10 years
Rental:	\$1,500,000 annually
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The lease agreement is a non-arm's length lease arrangement. The applicant has submitted an affidavit attesting to that there is a business relationship between the landlord and the tenant.

Lease Rental Agreement (ADHCP)

The site of the ADHCP is currently being leased under the following:

Date:	August 1, 2012
Premises:	One Prospect Park West, Brooklyn, New York
Lessor:	1 Prospect Park ALF, LLC
Lessee:	Northern Manor Multicare Center, Inc.
Term:	Initial five year commencing October 1, 2012 with a single five-year renewal term commencing October 1, 2017 and terminating on September 30, 2022.
Rental:	Year 1-3: \$369,725 annually Year 4-6: \$385,800 annually Year 7-9: \$401,875 annually Year 10: \$417,950 annually

The applicant has submitted an executed lease assignment for the site where the ADHCP is located, summarized below:

Date	June 1, 2015
Premises	One Prospect Park West, Brooklyn, New York
Assignor	Northern Manor Multicare Center, Inc.
Assignee	North Manor Operations Associates, LLC

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in operator, summarized below:

RHCFC:	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
<b>Revenues:</b>				
Medicaid (Geriatric)	\$265.92	\$14,428,480	\$239.78	\$12,821,756
Medicaid (Vent)	\$616.52	4,545,021	\$616.12	4,390,471
Medicare (Geriatric)	\$473.68	4,657,667	\$600.00	5,605,800
Medicare (Vent)	\$1,043.00	855,146	\$819.89	1,001,906
Private (Geriatric)	\$450.12	2,952,795	\$495.00	4,482,720
Private (Vent)	\$213.00	\$75,360	\$855.00	116,280
Total Revenues		\$27,514,469		\$28,418,933
<b>Expenses:</b>				
Operating	\$316.72	\$25,109,177	\$310.55	\$24,954,343
Capital	19.21	1,523,054	38.47	3,091,043
Total Expenses	\$335.93	\$26,632,231	\$349.02	\$28,045,386
Net Income		\$882,238		\$373,547
Utilization (total)		79,279		80,356
RHCF patient days		70,651		71,872
Vent patient days		8,628		8,484
Occupancy				95.30%
Breakeven				94.88%

RHCF utilization broken down by payor source for the current year (2014) and first year is as follows:

	Current Year	Year One
Medicaid	77.74%	75.41%
Medicare	13.72%	13.15%
Private	8.54%	11.44%

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

- The increase in reimbursement rates for Medicare (Vent) and Medicare (Geriatric) reflects the applicant's experience capturing patients with increased acuity levels. The projected Private (Geriatric) and Private (Vent) rates reflect increases that will be negotiated and implemented by the proposed operator. The Medicaid (Geriatric) rate is decreasing in the first year as it is based on the 1/1/15 Statewide Pricing Rate issued by the New York State Department of Health.
- The applicant projected an increase in patient days as a result of referrals from hospital discharge planners as well as marketing initiatives and community outreach efforts. The applicant indicated that the members are experienced, seasoned operators of a number of RHCs in New York State and that this experience will facilitate the development of new relationships with hospital discharge planners, as well as strengthen existing relationships.
- Expense assumptions are based on historical experience except for the following expense reductions:
  - Salaries and wages are projected to decrease by \$275,188 due to a reduction of management and administrative staff (a reduction of 4.8 FTEs) and select direct care staff (RNs will be reduced by 3.1 FTE and Aides/Orderlies by 10.6). The staffing reductions will be mitigated by increases in other direct care staff, including 7.1 FTEs for Activities Program staff and an additional 1.6 FTEs for Social Workers and Psychologists.
  - Professional fees are projected to decrease by \$191,335.
  - Non-medical and non-surgical supplies are projected to decrease by \$130,961.
- The increase in capital expenses is due to rent expenses that the proposed operator will be obligated to pay for the facility pursuant to the submitted lease agreement.
- The applicant has indicated that patient care will not suffer as a result of the cost reductions.

ADHCP:

	<u>Current Year (2014)</u>	<u>Year One</u>
Revenues	\$4,431,571	\$6,714,319
Expenses	<u>3,985,389</u>	<u>3,736,032</u>
Net Income	\$446,182	\$2,978,287

Visits	30,850	51,462
Cost Per Visit	\$129.19	\$72.60

The ADHCP revenues are based on current Medicaid and Private Pay reimbursement rates. The projected increase in visits is based upon the applicant's expectation that, following the change in ownership, the ADHCPs utilization will resume to its 2013 level. The applicant indicated that the decrease in utilization that occurred in 2014 was attributed to an investigation by the NYS Office of the Attorney General. Corrective action was undertaken by the facility and the ADHCP has continued to operate at the modest utilization levels.

ADHCP utilization broken down by payor source for the current year (2014) and first year is as follows:

	<u>Current Year</u>	<u>Total</u>
Medicaid	32.98%	39.89%
Private	67.02%	60.11%

The combined revenues and expenses for the entire facility during the first year after the change in operator is as follows:

	<u>Current Year (2014)</u>	<u>Year One</u>
Revenues	\$32,173,116	\$35,133,252
Expenses	<u>30,617,620</u>	<u>31,781,418</u>
Net Income	\$1,555,496	\$3,351,834

### Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$18,116,692 and will be met with \$4,539,173 of equity from the proposed members and a loan for \$13,587,519 at 5% interest for a ten-year term and 25-year amortization period. The purchase price for the real estate interests is \$10,000,000 and will be met via a down payment of \$100,000 (paid) and a loan for \$9,900,000 at 5% interest for a ten-year term and 25-year amortization period. Letters of interest for the respective operating and realty interest financings have been submitted. The applicant and landlord have each submitted affidavits attesting that they will fund their respective balloon payments from their personal resources if acceptable financing is not available at the time of refinancing.

Working capital requirements are estimated at \$5,296,903, which is equivalent to two months of first year expenses. The applicant will finance \$2,648,451 at an interest rate of 5% for a five-year term. The applicant submitted a letter of interest regarding the financing. The remaining \$2,648,452 will be met via equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Northern Manor Operations Associates, LLC, which indicates the availability of sufficient funds for the equity contribution.

BFA Attachment C is a pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$7,187,595.

The submitted budget indicates a net income of \$3,351,834 during the first year subsequent to the change in operator. 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 is a financial summary of Northern Manor Multicare Center for the period 2012 through 2014. As shown, the facility had an average negative working capital position and an average negative net asset position. The applicant as indicated that the reason for the average negative working capital position and the average negative net asset position was the result of a Medicaid audit liability of over \$6,000,000 that was paid in 2013. Also, the entity achieved average net income of \$1,000,042 from 2012 through 2014. The applicant has indicated that the reason for the loss in 2013 was the result of the Medicaid audit liability of over \$6,000,000 that was paid in 2013.

BFA Attachment D is the 2012-2014 financial summaries of the RHCs in which the proposed members have ownership interests. The facilities have maintained an average positive net asset position and had positive income from operations for the period shown. Some of the facilities had a negative working capital position in 2014 due to CMI and capital reimbursement changes, and vacation and sick time accruals. The applicant has indicated that the reason for the losses for Bushwick (2013) and Chittenango Center (2012) was the result of a capital audit take-back. Financial statements for Washington Center for Rehabilitation and Indian River Rehabilitation and Health Care are not available as the facilities were newly acquired in 2014.

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	Personal Net Worth Statements of Proposed Members
BFA Attachment B	Financial Summary- Northern Manor Multicare Center
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries of members' affiliated RHCFs
BFA Attachment E	Applicant's Ownership Interest in affiliated RHCFs
BFA Attachment F	Personal Net Worth Statement of Daryl Hagler
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 152295-E**  
**North River Operations Associates LLC**  
**d/b/a Haverstraw Center for Rehabilitation and Nursing**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Rockland  
**Acknowledged:** November 23, 2015

**Executive Summary**

**Description**

North River Operations Associates, LLC d/b/a Haverstraw Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Northern Riverview Health Care Center, a 180-bed Article 28 Residential Health Care Facility (RHCF) with two respite beds located at 87 South Route 9W, Haverstraw (Rockland County). There will be no change in the number of beds or licensed services.

On June 1, 2015, the current operator of the RHCF, Northern Riverview Health Care Center, Inc., entered into an Asset Purchase Agreement (APA) with North River Operations Associates, LLC, for the sale and acquisition of the operations of Northern Riverview Health Care Center upon approval by the Public Health and Health Planning Council. In conjunction with the APA, North River Realty Associates, LLC, whose members are Daryl Hagler and Jonathan Hagler, entered into a Land Sale Contract with Northern Riverview Health Care Center, Inc. for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from North River Realty Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>	
Northern Riverview Health Care Center, Inc. Not-For-Profit Corporation (100%)	

<u>Proposed Operator</u>	
North River Operations Associates, LLC	100%
<u>Members</u>	
KR Northern Holding Co., LLC	99%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5%)	
Jeffrey Sicklick	1%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment D presents the ownership interest and financial summary of the proposed members' affiliated RHCFs.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services as a result of this project. Northern Riverview Health Care Center's occupancy was 95.5% in 2011, 92.0% in 2012, 95.0% in 2013, and 97.5% in 2014. Unaudited 2015 occupancy is 96.6% and current occupancy as of March 9, 2016 is 98.9%.

### 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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a related party in that proposed member Kenneth Rozenberg is CEO and has a 50% ownership interest in Centers.

### Financial Summary

There are no project costs associated with this proposal. The purchase price for the acquisition of the operating interests is \$18,909,208 and will be met with equity of \$4,734,802 from the proposed members' personal resources and a loan for \$14,174,406 at 5% for a ten-year term and 25-year amortization period. The purchase price for the real estate interests is \$7,500,000 and will be met with a loan for \$7,490,000 at 5% interest for a ten-year term and 25-year amortization period, and a \$10,000 down payment of equity. The projected budget is as follows:

Revenues:	\$18,667,153
Expenses:	<u>17,821,605</u>
Gain:	\$845,548

## 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 proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care [LTC]
5. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. (BFA)
6. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
7. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's signed Lease Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of a signed Certificate of Amendment to the Articles of Organization of KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of a revised and signed Operating Agreement for KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]



**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

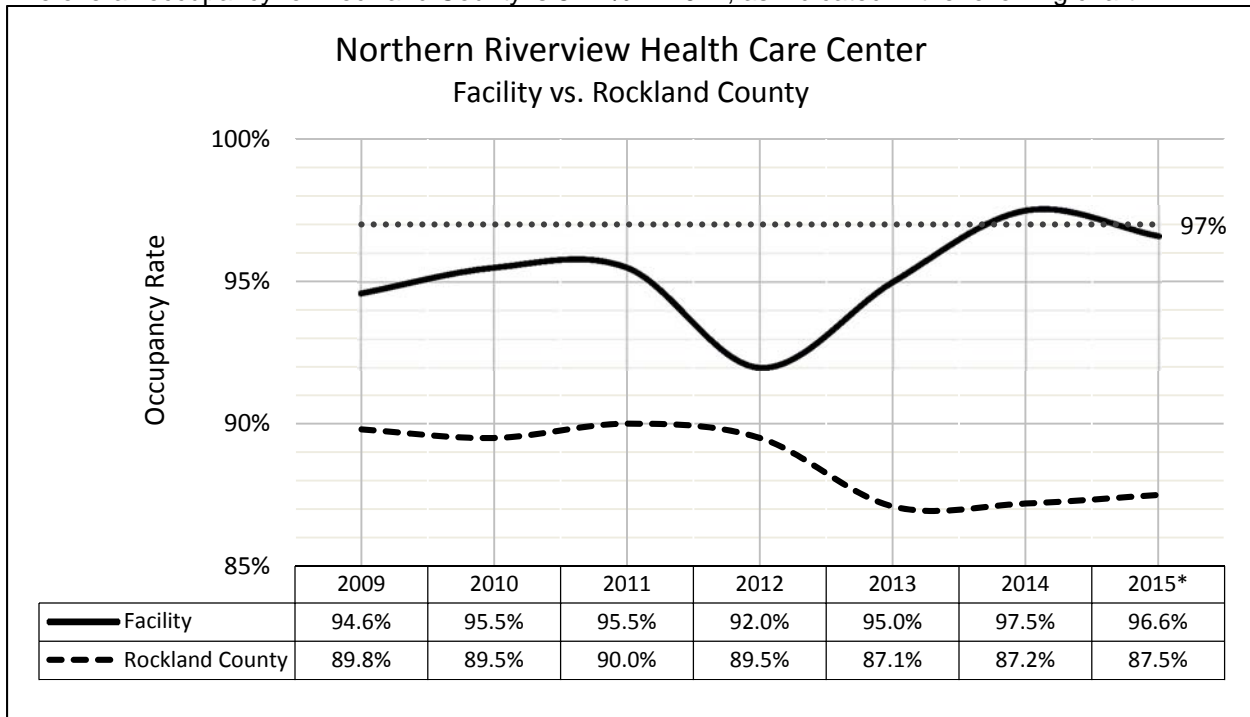
## Analysis

The current need methodology indicates a need for 320 additional beds in Rockland County.

### RHCF Need – Rockland County

<b>2016 Projected Need</b>	1,635
<b>Current Beds</b>	1,355
<b>Beds Under Construction</b>	-40
<b>Total Resources</b>	1,315
<b>Unmet Need</b>	320

The overall occupancy for Rockland County is 87.2% in 2014, as indicated in the following chart:



\*unaudited/facility reported data

Subsequent to the submission of this application, Summit Park Nursing Care Center, located in Rockland County, closed. As a result, Rockland County's occupancy is currently 95.3%. Northern Riverview Health Care Center's occupancy was 95.5% in 2011, 92.0% in 2012, 95.0% in 2013, and 97.5% in 2014. Occupancy for 2015 is approximately 96.6%. Current occupancy as of March 9, 2015 is 98.9%. Current CMI for the facility is 1.31 and, for the Medicaid-only population, 1.25. The proposed operator will implement new programs to serve a more diverse, higher acuity resident population and will include the following services: tracheostomy care, cardiac rehabilitation, enhanced wound care, complex clinical care and IV therapy.

## 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.

Northern Riverview Health Care Center's Medicaid admissions of 78.4% and 17.1% in 2012 and 2013, respectively, exceeded Rockland County's 75% rates of 24.4% and 26.5% in 2012 and 2013, respectively.

**Conclusion**

Approval is recommended to maintain the existing resources for the residents of Rockland County.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	Existing	Proposed
Facility Name	Northern Riverview Health Care Center	Haverstraw Center for Rehabilitation and Nursing
Address	87 South Route 9W Haverstraw, New York 10927	Same
RHCF Capacity	180	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Northern Riverview Health Care Center, Inc.	North River Operations Associates, LLC  <u>Members</u> Jeffrey Sicklick 1% KR Northern Holding Co, LLC 99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

**Facilities Reviewed**

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Buffalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present

Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present
 <u>Rhode Island Nursing Homes</u>	
Banister Center for Rehab	02/2016 to present
 <u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
 <u>Adult Homes</u>	
Washington Center Adult Home (AH)	02/2014 to present
 <u>Certified Home Health Agency</u>	
Alpine Home Health Care (CHHA)	07/2008 to present
 <u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
 <u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
 <u>Managed Long Term Care Company</u>	
Centers Plan for Health Living (MLTC)	01/2013 to present

Individual Background Review  
Current facility ownership is shown in brackets.

**Kenneth Rozenberg** is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present

Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present

Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

*DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.*

**Beth (Kosowsky) Rozenberg** retired in 1995 as a teacher from Park East Day School in New York, NY.

Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

**Jeffrey N. Sicklick** is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Bufflalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present

The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present
Washington Center Adult Home (AH) [10%]	02/2014 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
  - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.*

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.*

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
  - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
  - A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.*

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
  - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.*

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Steuben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.



A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

#### Project Review

This application proposes to establish North River Operations Associate, LLC as the new operator of Northern Riverview Health Care Center. The facility will be operated as Haverstraw Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member LLC, KR Northern Holding Company, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Nanuet Center for Rehabilitation and Nursing (Northern Manor Geriatric Center), Monsey Center for Rehabilitation and Nursing (Northern Metropolitan Residential Health Care Facility), and Haverstraw Center for Rehabilitation and Nursing.

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for the facilities in which Kenneth Rozenberg has an ownership interest in to contract with Centers. Centers is used as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the establishment of ownership.

#### 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 for approval 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 asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	June 1, 2015
Purchaser:	North River Operations Associates, LLC
Seller:	Northern Riverview Health Care Center, Inc.
Purchased Assets:	All assets used in the operation of the facility. Equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$18,909,208
Payment of Purchase Price:	\$10,000 cash deposit held in escrow \$18,899,208 due at time of Closing.

The applicant's financing plan appears as follows:

Equity via proposed members	\$4,734,802
Loan (5% interest, 10-year term, 25-year amortization period)	\$14,174,406

BFA Attachment A is the net worth summary for the proposed members of North River Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement. Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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 outstanding Medicaid overpayment liabilities.

### Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	June 1, 2015
Premises:	The parcel of land located at 87 South Route 9W, Haverstraw, New York
Seller:	Northern Riverview Health Care Center, Inc.
Purchaser:	North River Realty Associates, LLC
Purchase Price:	\$7,500,000
Payment of Purchase Price:	\$10,000 down payment paid; \$7,490,000 balance due at Closing.

The financing plan for the balance due on the real estate consist of a bank loan for \$7,490,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided. Daryl Hagler, who is the majority owner of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

#### Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	May 30, 2015
Premises:	A 180-bed RHCf located at 87 South Route 9W, Haverstraw, New York 10927
Landlord:	North River Realty Associates, LLC
Tenant:	North River Operations Associates, LLC
Terms:	10 years
Rental:	\$1,200,000 annually (\$100,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCfs. North River Realty Associates, LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues</u>				
Medicaid	\$262.84	\$13,959,703	\$245.17	\$13,089,381
Medicare	\$532.68	4,049,966	\$532.68	4,071,167
Commercial	\$361.25	513,695	\$361.25	516,226
Private Pay	\$514.75	<u>985,235</u>	\$514.75	<u>990,379</u>
Total Revenues		\$19,508,599		\$18,667,153
<u>Expenses</u>				
Operating	\$220.71	\$14,136,724	\$237.42	\$15,286,537
Capital	<u>18.52</u>	<u>1,185,818</u>	<u>39.37</u>	<u>2,535,068</u>
Total Expenses	\$239.23	\$15,322,542	\$276.79	\$17,821,605
Net Income		<u>\$4,186,057</u>		<u>\$845,548</u>
Total Patient Days		64,050		64,385
Occupancy		97.5%		98.00%
Breakeven				93.56%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCf-4 cost report information. Historical utilization for base year 2014 was 97.5%.
- For budget Year One, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Commercial and Private Pay rates are anticipated to remain the same in Year One.
- Expenses are increasing in year one due to added staff including 6.9 FTE RNs, 21.0 FTE Technician & Specialists, 2.6 FTE Aides/Orderlies, and 5.0 FTE Environment and Food Service staff. The increase will be offset by savings in other areas related to staff reductions in Management and

Supervision (2.3 FTEs), Clerical (5.3 FTEs), LPNs (2.7 FTEs) and Social Workers (2.7 FTEs). The applicant intends to implement new programs to serve a more diverse resident population including tracheostomy care, cardiac rehabilitation, enhanced wound care, complex clinical care, and IV therapy. By offering these additional services, the applicant anticipates the facility will be able to care for higher acuity residents while also helping to prevent unnecessary hospitalizations.

- Overall utilization is 97.5% and 98.0% for Current Year and Year One, respectively, while utilization by payor source is as follows:

	<u>Current Year and Year One</u>
Medicaid	82.92%
Medicare	11.87%
Private/Other	5.21%

- Breakeven utilization is 93.56% or 61,469 patient days for the first year.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the acquisition of the operating interests is \$18,909,208 and will be met with \$4,734,802 equity from proposed members and a bank loan for \$14,174,406 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed North River Operations Associates, LLC member Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$2,970,268 based on two months of the first year's expenses. Working capital will be satisfied with \$1,485,134 equity from proposed members and the remaining \$1,485,134 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of North River Operations Associates, LLC, reveals sufficient resources for stated levels of equity. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$6,219,936. It is noted that assets include \$18,909,208 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$12,689,272.

The submitted budget indicates that net income of \$845,548 will be generated for the first year. 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 C, financial summary of Northern Riverview Health Care Center, indicates that the facility has maintained positive working capital, positive equity position and generated an average annual net operating profit of \$4,008,175 for the 2013-2014 period shown, and a net operating profit of \$2,406,149 as of June 30, 2015.

BFA Attachments D, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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BFA Attachment A	North River Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	North River Realty Associates, LLC, Daryl Hagler Net Worth
BFA Attachment C	Financial Summary, Northern Riverview Health Care Center
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedule
BNHLC Attachment A	Quality Measures and Inspection Report



Project # 152296-E
North Met Operations Associates LLC
d/b/a Monsey Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Rockland
Acknowledged: December 30, 2015

Executive Summary

Description

North Met Operations Associates, LLC d/b/a Monsey Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Northern Metropolitan Residential Health Care Facility Inc., a 120-bed Article 28 Residential Health Care Facility (RHCF) located at 225 Maple Avenue, Monsey (Rockland County). The facility also operates a 46-slot on-site Adult Day Health Care Program (ADHCP), which is part of this request. There will be no change in services provided.

On June 1, 2015, Northern Metropolitan, Inc. entered into an Asset Purchase Agreement (APA) with North Met Operations Associates, LLC for the sale and acquisition of the operating interest of Northern Metropolitan Residential Health Care Facility Inc. The real estate will remain unchanged. The applicant will lease the premises from Ledri Realty Associates, LLC, an unrelated party, via assignment of the current lease agreement.

Ownership of the operations before and after the requested change is as follows:

Table with 1 column: Current Operator. Row 1: Northern Metropolitan Residential Health Care Facility Inc. (100%)

Table with 2 columns: Proposed Operator, Members. Row 1: North Met Operations Associates, LLC 100%. Row 2: KR Northern Holding Co., LLC 99%. Row 3: Kenneth Rozenberg (95%). Row 4: Beth Rozenberg (5%). Row 5: Jeffrey Sicklick 1%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment C presents the ownership interest and financial summary of the proposed members' affiliated RHCFs.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this project. Northern Metropolitan Residential Health Care Facility's occupancy was 89.4% in 2012, 88.0% in 2013, and 89.4% in 2014. Current occupancy, as of January 27, 2016 is 96.7%.

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care (Centers). Centers is a related party in that proposed member Kenneth

Rozenberg is CEO and has a 50% ownership interest.

#### Financial Summary

There are no project costs associated with this proposal. The purchase price for the operations is \$8,709,661 and will be met with \$2,184,915 from the proposed members' equity and a bank loan for \$6,524,746 at 5% for a 10-year term and 25-year amortization. Greystone Has provided a letter of interest for the financing at the stated terms. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable refinancing not be available at the time the loan comes due. The projected budget is as follows:

Revenues:	\$16,933,007
Expenses:	<u>13,902,627</u>
Gain:	\$ 3,030,380

## 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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment and Assumption of the lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department.
9. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of photocopies of the signed modification of lease dated March 31, 1981 and stipulation of settlement dated September 14, 1995 (referenced in section 1.1.18 of the Asset Purchase Agreement), and a signed assignment of the lease, all of which must be acceptable to the Department. [CSL]



11. Submission of a photocopy of a signed Certificate of Amendment to the Articles of Organization of KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a revised and signed Operating Agreement for KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

## Background and Analysis

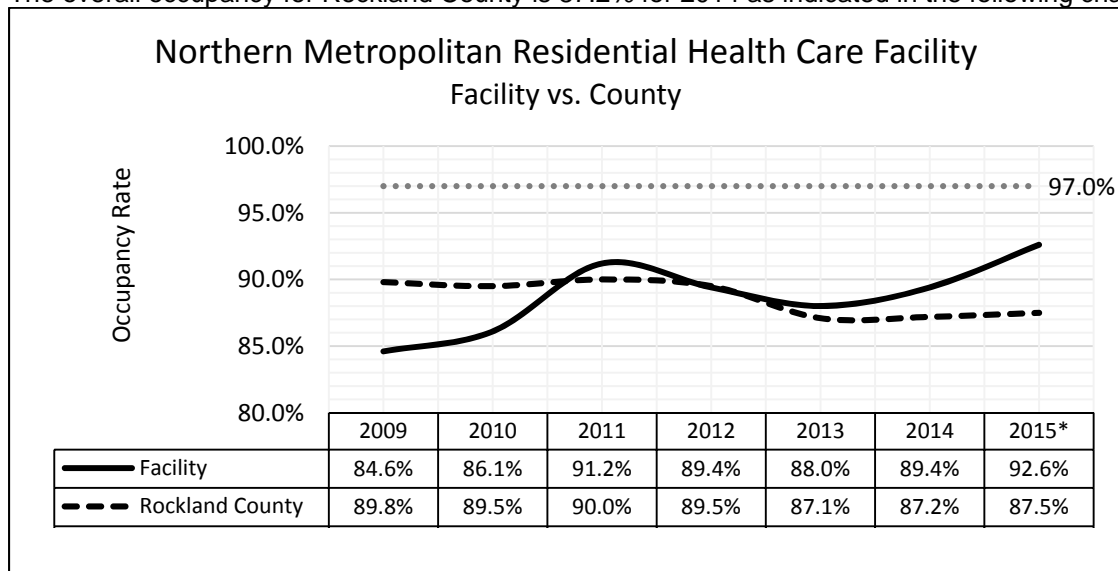
North Met Operations Associates LLC d/b/a Monsey Center for Rehabilitation and Nursing, seeks approval to become the established operator of Northern Metropolitan Residential Health Care Facility, an existing 120-bed Article 28 residential health care facility (RHCF), located at 225 Maple Avenue, Monsey, 10952, in Rockland County. In addition, the applicant seeks approval to become the operator of the 46-slot adult day health care program currently operated at the facility.

The need methodology indicates a need for 320 additional beds in Rockland County.

### RHCF Need – Rockland County

2016 Projected Need	1,635
Current Beds	1,355
Beds Under Construction	-40
Total Resources	1,315
Unmet Need	320

The overall occupancy for Rockland County is 87.2% for 2014 as indicated in the following chart:



\*unaudited, facility reported data

With the recent closing of Summit Park Nursing Care Center, Northern Metropolitan Residential Health Care Facility has received new admissions and is currently at 97% occupancy. Rockland County is at 95.3%. In addition to the recent influx of admissions, the applicant noted additional plans to increase and sustain occupancy at the Department's planning optimum. New programs to serve a more diverse resident population, higher acuity residents, and prevent unnecessary hospitalizations include the following services: tracheostomy care, cardiac rehabilitation, enhanced wound care, complex clinical care and IV therapy.

The applicant also plans to make cosmetic improvements throughout the facility as well as perform the following renovations:

- New lobby including hospitality and lounge areas;
- New multi-purpose room which will include:
  - A new therapy suite and solarium, with indoor/outdoor space;
  - A new synagogue; and

- Additional guest suites on the ground floor, which will be available for overnight stays for family members. The guest suites will have a significant impact on Orthodox Jewish residents, which make up approximately 60% of the residents in the facility, and whose family members are unable to travel during weekly religious observances.

**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.

Northern Metropolitan Residential Health Care Facility’s Medicaid admissions of 67.7% in 2012 and 71.1% in 2013 exceeded Rockland County 75% rates of 24.4% and 26.5% in 2012 and 2013, respectively.

**Conclusion**

With the recent closure of a nursing home in the planning area, approval of this application will result in maintaining a necessary community and Medicaid resource in Rockland County.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

**Program Analysis**

**Facility Information**

	Existing	Proposed
Facility Name	Northern Metropolitan Residential Health Care Facility	Monsey Center for Rehabilitation and Nursing
Address	225 Maple Avenue Monsey, New York 10952	Same
RHCF Capacity	120	Same
ADHC Program Capacity	46	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Northern Metropolitan Residential Health Care Facility Inc	North Met Operations Associates LLC  <u>Members</u> Jeffrey Sicklick 1% KR Northern Holding Co, LLC 99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

## Facilities Reviewed

### Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present

### Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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### Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

### Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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### Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
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### Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
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### Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
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### Managed Long Term Care Company

Centers Plan for Health Living (MLTC)	01/2013 to present
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## Individual Background Review

Current facility ownership is shown in brackets.

**Kenneth Rozenberg** is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

*DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.*

**Beth (Kosowsky) Rozenberg** retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present

Banister Center for Rehab (RI) [5%]

02/2016 to present

**Jeffrey N. Sicklick** is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Buffalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present
Washington Center Adult Home (AH) [10%]	02/2014 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
  - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.*

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 11, 2012 survey findings.

- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.*

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
  - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
  - A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took*

*steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.*

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
  - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.*

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Stueben Center for Rehabilitation and



Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCf in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

#### Project Review

This application proposes to establish North Met Operations Associates, LLC as the new operator of Northern Metropolitan Residential Health Care Facility. The facility will be operated as Monsey Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member KR Northern Holding Company, LLC was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Nanuet Center for Rehabilitation and Nursing (Northern Manor Geriatric Center), Monsey Center for Rehabilitation and Nursing (Northern Metropolitan Residential Health Care Facility), and Haverstraw Center for Rehabilitation and Nursing.

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for the facilities in which Kenneth Rozenberg has ownership interest to contract with Centers. Centers is a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the change in ownership.

#### 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 for approval 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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**Asset Purchase Agreement**

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon Public Health and Health Planning Council approval of this CON. The terms of the agreement are summarized below:

Date:	June 1, 2015
Purchaser:	North Met Operations Associates, LLC
Seller:	Northern Metropolitan, Inc.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents. The 46 slot adult day health care program.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$8,709,661
Payment of Purchase Price:	\$10,000 cash deposit \$8,699,661 due at closing.

The applicant's financing plan appears as follows:

Equity via proposed members	\$2,184,915
Loan (5% interest, 10-year term, 25-year amortization period)	\$6,524,746

BFA Attachment A is the net worth summary for the proposed members of North Met Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement. Greystone has provided a letter of interest for the loan at the stated terms. Proposed member Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable refinancing not be available at the time the loan comes due.

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, the facility has no outstanding Medicaid liabilities.

## Lease Agreement

Facility occupancy is subject to an executed lease agreement and the assignment and assumption of the lease to the proposed operators. The terms of the executed lease agreement are summarized as follows:

Date:	January 17, 1972
Premises:	A 120-bed RHCF located at 225 Maple Avenue, Monsey, New York 10952
Landlord:	Ledri Realty Associates, LLC
Tenant:	Northern Metropolitan Residential Health Care Facility Inc.
Terms:	20 years with two (2) 20-year renewals
Rental:	\$228,000 annually (\$19,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is an arm's length agreement.

## Assignment and Assumption of the Lease Agreement

Facility occupancy is subject to a draft assignment and assumption of the lease agreement, the terms of which are summarized as follows:

Assignor:	Northern Metropolitan Residential Health Care Facility, Inc.
Assignee:	North Met Operations Associates, LLC
Rights assigned:	All rights assigned under the Asset Purchase Agreement and upon approval by the New York State Department of Health, assignor has agreed to assignee all rights under the lease agreement dated January 17, 1972.
Extension:	Assignor has agreed to extend the original lease to September 30, 2035.

## Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

### RHCF

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
Revenues				
Medicaid	\$266.00	\$7,945,137	\$243.84	\$7,740,457
Medicare	\$548.38	2,858,736	\$372.09	3,324,600
Commercial	\$301.12	973,219	\$301.08	1,034,346
Private Pay	\$441.91	370,321	\$418.93	441,045
Total Revenues		\$12,147,413		\$12,540,448
Expenses				
Operating	\$323.97	\$12,684,113	\$283.41	\$11,793,099
Capital	19.61	767,670	24.66	1,026,047
Total Expenses	\$343.58	\$13,451,783	\$308.07	\$12,819,146
RHCF Net Income(Loss)		<u>(\$1,304,370)</u>		<u>(\$278,698)</u>
Total Patient Days		39,152		41,611
Occupancy %		89.4%		95.0%
Breakeven %				97.1%

ADHCP

	<u>Current Year</u>	<u>Year One</u>
Revenues		
Medicaid	\$2,911,961	\$2,405,545
Private Pay	<u>642,767</u>	<u>1,987,014</u>
Total Revenues	\$3,554,728	\$4,392,559
Expenses		
Operating	\$839,716	\$900,706
Capital	<u>1,800</u>	<u>182,775</u>
Total Expenses	\$841,516	\$1,083,481
ADCHP Net Income	<u>\$2,713,212</u>	<u>\$3,309,078</u>
Visits	20,894	26,790
Total (RHCF & ADHCP) Net Income	<u>\$1,408,842</u>	<u>\$3,030,380</u>

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCF-4 cost report information. Historical utilization for base year 2014 was 89.4%.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Private Pay rates are anticipated to increase in year one based on forecasted increases and expectations per negotiated contracts, which are more in line with Medicare rates.
- Expenses will be reduced by \$891,014 in the first year due to a reduction in Administrative, LPNs and Aides/Orderlies staff salaries and benefits (\$739,809) which will not interrupt patient care, a reduction in service fees and contracts through better negotiations (\$48,293), and a reduction in management expenses (\$102,912).
- The increase in ADHCP utilization is anticipated due to an increase in marketing and outreach efforts and an increase in the days of operation from six to seven days per week. The additional need for ADHC services has been created by the recent closure of Summit Park Nursing Care Center, which operated an ADHCP.
- Overall utilization for the RHCF is 89.4% and 95.0% for current year and year one, respectively, while utilization by payor source is as follows:

	<u>Current Year and Year One</u>
Medicaid	76.29%
Medicare	13.31%
Private/Other	10.40%

- Utilization by payor source for the ADCHP for current year and year one is as follows:

	<u>Current Year and Year One</u>
Medicaid	55.21%
Private	44.79%

- Breakeven utilization for the RHCF is 97.11% for the first year.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interests is \$8,709,661 and will be met with \$2,184,915 equity from the proposed members and a bank loan for \$6,524,746 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed member Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable refinancing not be available at the time the loan comes due. BFA Attachment E is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$2,317,105 based on two months of the first year's expenses. Working capital will be satisfied with \$1,158,553 equity from the proposed members and the remaining \$1,158,552 to be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of North Met Operations Associates, LLC, reveals sufficient resources for the stated levels of equity. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,343,468. It is noted that assets include \$8,709,661 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be negative \$5,366,193.

The submitted budget indicates that net income of \$3,030,380 will be generated for the first year. BFA Attachment E is the budget sensitivity analysis based on current utilization of the facility as of September 30, 2015, which shows the budgeted RHCF revenues would decrease by \$1,145,257 resulting in a net profit in year one of \$1,885,123. 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, financial summary of Northern Metropolitan Residential Health Care Facility, indicates that the facility has maintained average positive working capital, positive equity position and generated an average annual net operating income of \$1,627,851 for the 2013-2014 period shown, and a net operating income of \$749,335 as of September 30, 2015.

BFA Attachments C, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown.

Based on the preceding and subject to 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	North Met Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	Financial Summary, Northern Metropolitan Residential Health Care Facility
BFA Attachment C	Proposed Members' Affiliated Residential Health Care Facilities
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 161109-E**  
**Abraham Operations Associates LLC**  
**d/b/a Allerton Center for Rehabilitation and Nursing**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Bronx  
**Acknowledged:** March 7, 2016

**Executive Summary**

**Description**

Abraham Operations Associates LLC d/b/a Allerton Center for Rehabilitation and Nursing, a New York limited liability company, is requesting to be established as the new operator of Beth Abraham Health Services, a 448-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 612 Allerton Avenue, Bronx (Bronx County). There will be no change in the number of beds or licensed services.

Beth Abraham Health Services and Schnurmacher Center for Rehabilitation and Nursing, a 200-bed RHCF located in Westchester County, are members of the CenterLight Health System, a not-for-profit New York State Managed Long Term Care organization that provides long-term healthcare services throughout the Bronx, Kings (Brooklyn), New York (Manhattan), Queens, Richmond (Staten Island), Nassau, Suffolk, Rockland and Westchester counties. A change in ownership request for Schnurmacher Center for Rehabilitation and Nursing is concurrently being reviewed under CON 161110.

On February 19, 2016, Beth Abraham Health Services, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Abraham Operations Associates LLC for the sale and acquisition of the operating interest of the facility upon Public Health and Health Planning Council approval.

In conjunction with the APA, Beth Abraham Health Services, the real property owner, entered into a Land Sale Contract with Light

Property Holdings Associates LLC, for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from Light Property Holdings Associates LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>	
Beth Abraham Health Services	
Not-For-Profit Corporation (100%)	

<u>Proposed Operator</u>	
Abraham Operations Associates LLC	100%
<u>Members</u>	
Light Operational Holdings Associates LLC	98%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5%)	
Jeffery Sicklick	2%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment D presents the ownership interests and financial summaries of the proposed members' affiliated RHCFs acquired prior to 2015.

The following CON applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are concurrently under review: CON 152295-

Northern Riverview Health Care Center, Inc., CON 152296-Northern Metropolitan Residential Health Care Facility, CON 151260-Northern Manor Multicare Center, Inc., and CON 161110-Schnurmacher Center for Rehabilitation & Nursing Services.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Beth Abraham Health Services' occupancy was 96.7% in 2012, 97.7% in 2013 and 96.8% in 2014.

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a related party in that proposed member Kenneth Rozenberg is the CEO and 50% owner.

Financial Summary

There are no project costs associated with this proposal.

The purchase price for the acquisition of the operating interests is \$30,305,600 and will be met with \$5,100,000 equity held in escrow, \$6,301,400 equity from the proposed members' personal resources and a loan for \$18,904,200 at 5% for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if acceptable refinancing is not available. The purchase price for the real estate interests is \$25,000,000 and will be met with a loan for \$25,000,000 at 5% interest for a ten-year term and 25-year amortization period. Daryl Hagler, managing member of Light Property Holdings Associates LLC, has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available after the ten-year period. The projected budget is as follows:

Revenues:	\$54,244,218
Expenses:	<u>53,566,087</u>
Gain:	\$678,131

## 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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's executed and amended agreement of lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed and amended Operating Agreement of Light Operational Holding Associates LLC, acceptable to the Department. [CSL]



11. Submission of a photocopy of the executed and amended Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed and amended Asset Purchase 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

## Project Description

Abraham Operations Associates, LLC, doing business as Allerton Center for Rehabilitation and Nursing, seeks approval to become the established operator of Beth Abraham Health Services, an existing 448-bed Article 28 residential health care facility (RHCF), located at 612 Allerton Avenue, Bronx, 10467 in Bronx County.

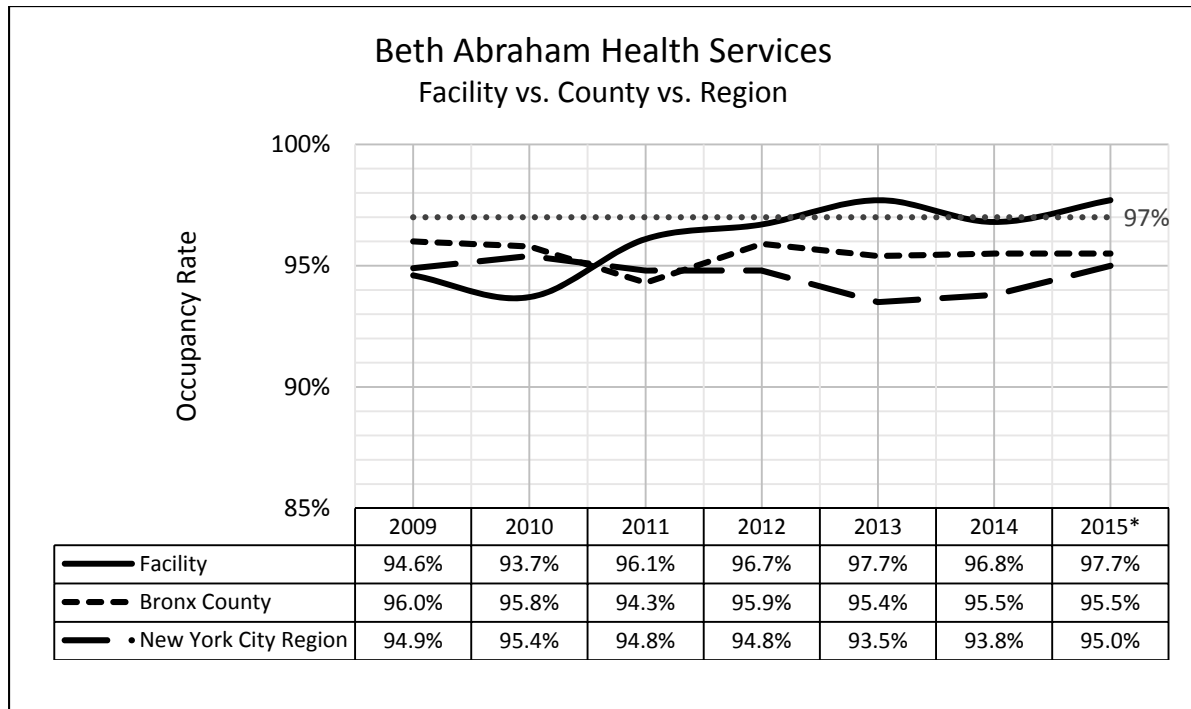
## Analysis

The need methodology indicates a need for 41,589 beds in the New York City Region.

### RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	41,769
Beds Under Construction	-180
Total Resources	41,589
Unmet Need	9,482

The overall 2014 occupancy for Bronx County and the New York City Region is 95.5% and 93.8%, respectively, as indicated in the following chart:



\*unaudited, facility reported data

The facility provided daily census for 2015 yielding 97.7% occupancy. The facility's self-reported occupancy thus far in 2016 is 95.7%, with current occupancy as of March 14, 2016 at 95.8%. The facility has maintained strong occupancy with rates close to or exceeding the Department's planning optimum of 97%. The proposed operators expect that the combination of the facility's existing operations and the applicant's experience as a seasoned operator of numerous RHCFs in New York State will ensure that these high rates of occupancy will be sustained upon the change of ownership.

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 has 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.

Beth Abraham Health Services’ Medicaid admissions of 23.3% and 17.0% in 2013 and 2014, respectively, did not exceed Bronx County’s 75% rates of 29.8% in 2013 and 29.1% in 2014. The facility will be required to follow the contingency plan noted below.

Conclusion

Approval of this application will result in maintaining a needed resource in the community.

Recommendation

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Beth Abraham Health Services	Allerton Center for Rehabilitation and Nursing
Address	612 Allerton Avenue Bronx, New York 10467	Same
RHCF Capacity	448	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Beth Abraham Health Services	Abraham Operations Associates, LLC 100%  <u>Members</u> Jeffrey Sicklick 2% Light Operational Holdings Associates, LLC 98% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

## Facilities Reviewed

### Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Buffalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present

### Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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### Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

### Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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### Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
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### Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
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### Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
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### Managed Long Term Care Company

Centers Plan for Health Living (MLTC)	01/2013 to present
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## Individual Background Review

Current facility ownership is shown in brackets.

**Kenneth Rozenberg** is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

*DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.*

**Beth (Kosowsky) Rozenberg** retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

**Jeffrey N. Sicklick** is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Buffalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present

Washington Center Adult Home (AH) [10%]	02/2014 to present
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#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
  - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.*

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.*

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
  - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.*

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
  - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.*



A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Steuben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

#### Project Review

This application proposes to establish Abraham Operations Associates, LLC as the new operator of Beth Abraham Health Services. The facility will be operated as Allerton Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member LLC, Light Operational Holdings Associates, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Allerton Center for Rehabilitation and Nursing (Beth Abraham Health Services) and Tibbits Center for Rehabilitation and Nursing (Schnurmacher Center for Rehabilitation and Nursing).

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for facilities in which Kenneth Rozenberg has an ownership interest to contract with Centers. They use Centers as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence background because the transaction is currently being processed to effectuate the establishment of ownership.

**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 for approval 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 asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	February 19, 2016
Purchaser:	Abraham Operations Associates LLC
Seller:	Beth Abraham Health Services
Purchased Assets:	All assets used in the operation of the facility. Equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$30,305,600
Payment of Purchase Price:	\$5,100,000 cash deposit held in escrow \$25,205,600 due at time of Closing.

The applicant's financing plan appears as follows:

Equity held in escrow	\$5,100,000
Equity via proposed members	\$6,301,400
Loan (5% interest, 10-year term, 25-year amortization period)	\$18,904,200

BFA Attachment A is the net worth summary for the proposed members of Abraham Operations Associates LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has

submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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 March 16, 2016, the facility had an outstanding Medicaid overpayment liability of \$393,492 related to a recent retroactive rate adjustment.

#### Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	February 19, 2016
Premises:	The parcel of land located at 612 Allerton Avenue, Bronx, New York
Seller:	Beth Abraham Health Services
Purchaser:	Light Property Holdings Associates LLC
Purchase Price:	\$25,000,000
Payment of Purchase Price:	\$25,000,000 due at Closing.

The financing plan for the real estate consists of a bank loan for \$25,000,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided by Greystone. Daryl Hagler, who is the majority owner of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

#### Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	December 31, 2015
Premises:	A 448-bed RHC located at 612 Allerton Avenue, Bronx, New York 10467
Landlord:	Light Property Holdings Associates LLC
Tenant:	Abraham Operations Associates LLC
Terms:	10 years
Rental:	\$6,000,000 annually (\$500,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCs. Light Property Holdings Associates LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

## Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
<b>Revenues</b>				
Medicaid	\$310.13	\$43,118,430	\$314.00	\$44,197,698
Medicare	\$603.35	5,345,686	\$691.90	6,205,625
Commercial	\$366.09	836,890	\$365.00	687,660
Private Pay	\$342.39	2,776,114	\$365.00	3,153,235
Other*		<u>5,851,432</u>		<u>0</u>
<b>Total Revenues</b>		<b>\$57,928,552</b>		<b>\$54,244,218</b>
<b>Expenses</b>				
Operating	\$310.42	\$49,135,325	\$270.23	\$43,304,203
Capital	<u>\$38.43</u>	<u>6,084,084</u>	<u>\$64.04</u>	<u>10,261,884</u>
<b>Total Expenses</b>	<b>\$348.85</b>	<b>\$55,219,409</b>	<b>\$334.27</b>	<b>\$53,566,087</b>
<b>Net Income(Loss)</b>		<b><u>\$2,709,143</u></b>		<b><u>\$678,131</u></b>
<b>Total Patient Days</b>		<b>158,286</b>		<b>160,249</b>
<b>Occupancy</b>		<b>96.8%</b>		<b>98.0%</b>
<b>Breakeven</b>				<b>96.8%</b>

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCF-4 cost report information. Historical utilization for base year 2014 was 96.8% occupancy.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Commercial rates are conservative and Private Pay rates have been increased by 6.6% for year one.
- For budgeted year one, Medicare includes the Part B therapy revenues.
- Other\* revenues represent vending machine commissions, rentals, rebates and discounts, medical records abstract fees and activities income.
- Expenses are decreasing in year one due to reduction in salaries and benefits from unnecessary management, food service and aide staff, with an offset increase in needed areas such as therapists and LPNs
- Overall utilization is 96.8% and 98.0% for current year and year one, respectively, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	84.9%	84.4%
Medicare	9.5%	10.0%
Private/Other	5.6%	5.6%

- Breakeven utilization is 96.77 % or 158,245 inpatient days for the first year.

## Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interests is \$30,305,600 and will be met with \$5,100,000 held in escrow, \$6,301,400 equity from the proposed members and a bank loan for \$18,904,200 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed Abraham Operations Associates LLC member, Kenneth Rozenberg, has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$8,927,681 based on two months of the first year's expenses. Working capital will be satisfied with \$4,463,840 equity from proposed members and the remaining \$4,463,841 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of Abraham Operations Associates LLC, reveals sufficient resources for stated levels of equity. BFA Attachment E is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$15,865,241. It is noted that assets include \$30,305,600 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$14,440,359.

The submitted budget indicates that net income of \$678,131 will be generated for the first year. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of December 31, 2015, which shows the budgeted revenues would increase by \$5,173,392 resulting in a net income in year one of \$5,851,523. 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 C, financial summary of Beth Abraham Health Services, indicates that the facility has maintained positive working capital, positive equity position and generated an average annual net operating income of \$1,833,332 for the 2013-2014 period shown, and net operating income of \$3,730,934 as of December 31, 2015.

BFA Attachments D, financial summary of the proposed members' affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown. In 2015, Kenneth Rozenberg and Beth Rozenberg obtained final PHHPC approval for membership interest in Hope Center for HIV & Nursing Care, a 66-bed RHCF located in the Bronx, and Kenneth Rozenberg and Jeffery Sicklick obtained final PHHPC approval for membership interest in Buffalo Center for Rehabilitation & Nursing, a 200-bed RHCF located in Buffalo. Kenneth Rozenberg has a 10% membership interest in Northwoods Rehab & Nursing Center at Moravia, a 40-bed RHCF located in Moravia. In 2016, the following RHCF applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are pending; CON 152295-Northern Riverview Health Care Center, Inc., a 180-bed RHCF located in Haverstraw; CON 152296-Northern Metropolitan Residential Health Care Facility, 120-bed RHCF located in Monsey; and CON 151260-Northern Manor Multicare Center, Inc., a 23-bed RHCF located in Nanuet.

Based on the preceding and subject to 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	Abraham Operations Associates LLC, Proposed Members Net Worth
BFA Attachment B	Light Property Holdings Associates LLC, Daryl Hagler Net Worth
BFA Attachment C	Financial Summary, Beth Abraham Health Services
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedules
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Equity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



Project # 161110-E  
Schnur Operations Associates LLC  
d/b/a Tibbits Center for Rehabilitation and Nursing

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Westchester  
**Acknowledged:** March 7, 2016

**Executive Summary**

**Description**

Schnur Operations Associates LLC d/b/a Tibbits Center for Rehabilitation and Nursing, a New York limited liability company, is requesting to be established as the new operator of Schnurmacher Center for Rehabilitation and Nursing, a 200-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 12 Tibbits Avenue, White Plains (Westchester County). There will be no change in the number of beds or licensed services.

Schnurmacher Center for Rehabilitation and Nursing and Beth Abraham Health Services, a 448-bed RHCF located in the Bronx, are members of the CenterLight Health System, a not-for-profit, New York State Managed Long Term Care organization that provides long-term healthcare services throughout the Bronx, Kings (Brooklyn), New York (Manhattan), Queens, Richmond (Staten Island), Nassau, Suffolk, Rockland and Westchester counties. A change in ownership request for Beth Abraham Health Services is concurrently being reviewed under CON 161109.

On February 19, 2016, Schnurmacher Center for Rehabilitation and Nursing, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Schnur Operations Associates LLC for the sale and acquisition of the operating interest of the facility.

In conjunction with the APA, Schnurmacher Center for Rehabilitation and Nursing, the real property owner, entered into a Land Sale

Contract with Light Property Holdings II Associates LLC for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from Light Property Holdings II Associates LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>	
Schnurmacher Center for Rehabilitation and Nursing (Not-for-Profit)	100%

<u>Proposed Operator</u>	
Schnur Operations Associates, LLC	100%
<u>Members</u>	
Light Operational Holdings Associates LLC	98%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5%)	
Jeffrey Sicklick	2%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment D presents the ownership interests and financial summaries of the proposed members' affiliated RHCFs acquired prior to 2015.

The following CON applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are concurrently under review: CON 152295-Northern Riverview Health Care Center, Inc., CON 152296-Northern Metropolitan Residential Health Care Facility, CON 151260-Northern Manor Multicare Center, Inc., and CON 161109-Beth Abraham Health Services.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

There will be no changes to beds or services as a result of this project. Schnurmacher Center for Rehabilitation and Nursing's occupancy was 97.6% in 2012, 98.5% in 2013 and 97.5% in 2014.

#### 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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a related party in that proposed member Kenneth Rozenberg is the CEO and 50% owner.

#### Financial Summary

There are no project costs associated with this proposal.

The purchase price for the acquisition of the operating interests is \$12,454,400 and will be met with \$2,100,000 equity held in escrow, \$2,588,900 equity from the proposed members' personal resources and a loan for \$7,765,500 at 5% for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if acceptable refinancing is not available.

The purchase price for the real estate interests is \$10,000,000 and will be met with a loan for \$10,000,000 at 5% interest for a ten-year term and 25-year amortization period. Daryl Hagler, managing member of Light Property Holdings II Associates LLC, has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available after the ten-year period. The projected budget is as follows:

Revenues	\$20,544,800
Expenses	<u>20,138,790</u>
Gain	\$406,010



## 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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's executed and amended agreement of lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed and amended Operating Agreement of Light Operational Holding Associates LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed and amended Agreement for the Sale of Real Property, acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicant's executed and amended Asset Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

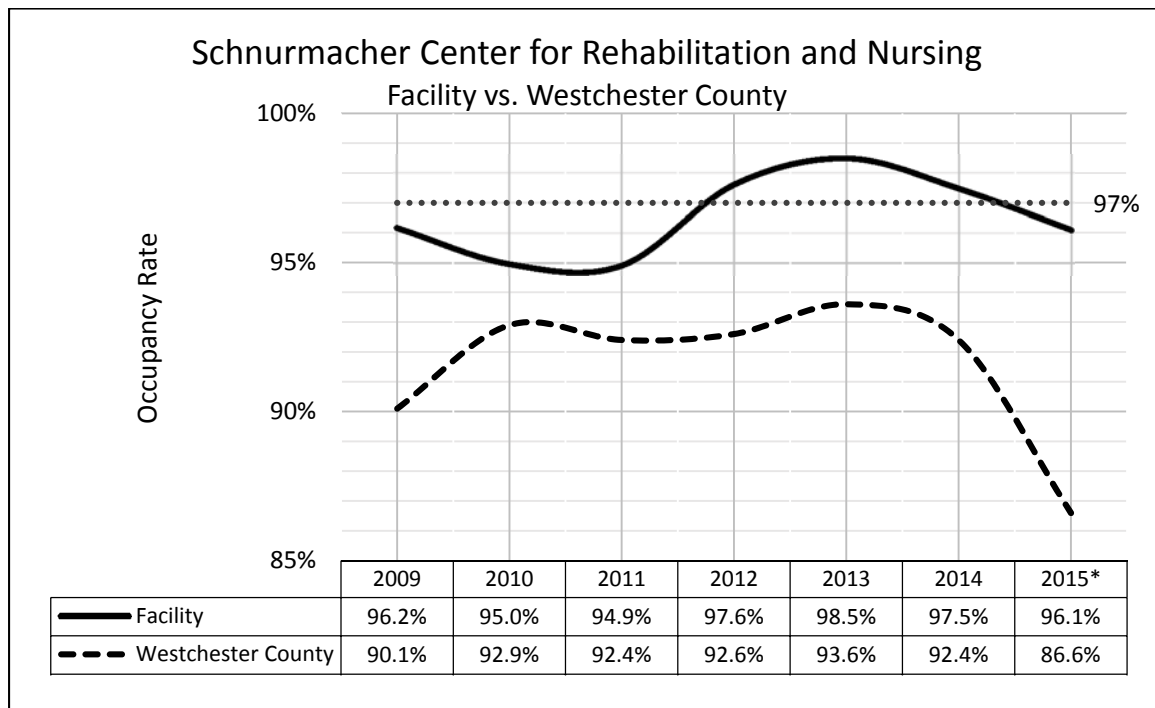
## Analysis

The need methodology indicates a need for 498 additional beds in Westchester County.

### RHCF Need – Westchester County

<b>2016 Projected Need</b>	6,716
<b>Current Beds</b>	6,066
<b>Beds Under Construction</b>	152
<b>Total Resources</b>	6,218
<b>Unmet Need</b>	498

The overall occupancy for Westchester County is 92.4% for 2014 as indicated in the following chart:



\*unaudited, facility reported data

The facility provided daily census for 2015 indicating a 96.1% occupancy. Occupancy thus far in 2016 is 96.8%. The facility has maintained strong occupancy with rates close to or exceeding the Department's planning optimum of 97%. The proposed operators expect that the combination of the facility's existing operations and the applicant's experience as a seasoned operator of numerous RHCs in New York State will ensure that these high rates of occupancy will be sustained upon the change of ownership.

## 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 has 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.

Schnurmacher Center for Rehabilitation and Nursing's Medicaid admissions of 24.5% and 24.5% in 2013 and 2014, respectively, exceeded Westchester County's 75% rates of 21.5% in 2013 and 18.5% in 2014.

**Conclusion**

Approval of this application will result in maintaining a needed resource for the Medicaid population in the community.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	Existing	Proposed
Facility Name	Schnurmacher Center for Rehabilitation and Nursing	Tibbits Center for Rehabilitation and Nursing
Address	12 Tibbits Avenue White Plains, New York 10606	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Schnurmacher Center for Rehabilitation and Nursing	Schnur Operations Associates, LLC  <u>Members</u> Jeffrey Sicklick 2% Light Operational Holdings Associates, LLC 98% Kenneth Rozenberg* (95%) Beth Rozenberg (5%)  *Managing Member

**Facilities Reviewed**

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Buffalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present

Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
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Managed Long Term Care Company

Centers Plan for Health Living (MLTC)	01/2013 to present
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Individual Background Review

Current facility ownership is shown in brackets.

**Kenneth Rozenberg** is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present

Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

*DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.*

**Beth (Kosowsky) Rozenberg** retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

**Jeffrey N. Sicklick** is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Buffalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
  - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.*

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.*

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
  - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.*

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.



A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
  - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.*

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Stueben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought

into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

#### Project Review

This application proposes to establish Schnur Operations Associates, LLC as the new operator of Schnurmacher Center for Rehabilitation and Nursing. The facility will be operated as Tibbits Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member LLC, Light Operational Holdings Associates, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Allerton Center for Rehabilitation and Nursing (Beth Abraham Health Services) and Tibbits Center for Rehabilitation and Nursing (Schnurmacher Center for Rehabilitation and Nursing).

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for facilities in which Kenneth Rozenberg has an ownership interest to contract with Centers. They use Centers as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence background because the transaction is currently being processed to effectuate the establishment of ownership.

#### 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 for approval 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 asset purchase agreement for the operating interests of the RHCf. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	February 19, 2016
Purchaser:	Schnur Operations Associates LLC
Seller:	Schnurmacher Center for Rehabilitation and Nursing
Purchased Assets:	All assets used in the operation of the facility. Equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$12,454,400
Payment of Purchase Price:	\$2,100,000 cash deposit held in escrow \$10,354,400 due at time of Closing.

The applicant's financing plan appears as follows:

Equity held in escrow	\$2,100,000
Equity via proposed members	\$2,588,900
Loan (5% interest, 10-year term, 25-year amortization period)	\$7,765,500

BFA Attachment A is the net worth summary for the proposed members of Schnur Operations Associates LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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 outstanding Medicaid overpayment liabilities.

### Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	February 19, 2016
Premises:	The parcel of land located at 12 Tibbits Avenue, White Plains, New York
Seller:	Schnurmacher Center for Rehabilitation and Nursing
Purchaser:	Light Property Holdings II Associates LLC
Purchase Price:	\$10,000,000
Payment of Purchase Price:	\$10,000,000 due at Closing.

The financing plan for the real estate consists of a bank loan for \$10,000,000 at 5% interest for a ten-year term and 25-year amortization period. A bank letter of interest at the stated terms has been provided by Greystone. Daryl Hagler, who is the majority owner of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

#### Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	December 31, 2015
Premises:	A 200-bed RHCf located at 12 Tibbits Avenue, White Plains, New York 10606
Landlord:	Light Property Holdings II Associates LLC
Tenant:	Schnur Operations Associates LLC
Terms:	10 years
Rental:	\$1,900,000 annually (\$158,333.33 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCfs. Light Property Holdings II Associates LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
Revenues				
Medicaid	\$260.49	\$15,734,125	\$237.06	\$14,384,800
Medicare	\$474.47	3,194,586	\$634.90	4,547,800
Commercial	\$359.19	907,303	\$350.00	754,950
Private Pay	\$453.65	676,386	\$450.00	857,250
Other*		<u>166,804</u>		<u>0</u>
Total Revenues		\$20,679,204		\$20,544,800
Expenses				
Operating	\$279.56	\$19,890,714	\$237.42	\$17,479,508
Capital	<u>16.13</u>	<u>1,147,755</u>	<u>39.37</u>	<u>2,659,282</u>
Total Expenses	\$295.69	\$21,038,469	\$276.79	\$20,138,790
Net Income(Loss)		<u>(\$359,265)</u>		<u>\$406,010</u>
Total Patient Days		71,151		71,905
Occupancy		97.5%		98.5%
Breakeven				96.6%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCf-4 cost report information. Historical utilization for base year 2014 was 97.5% occupancy.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Commercial and Private Pay rates are conservatively estimated for year one.
- For budgeted year one, Medicare includes the Part B therapy revenues.

- Other\* revenues represent vending machine commissions, rentals, rebates and discounts, medical records abstract fees and activities income.
- Expenses are decreasing in year one due to a reduction in salaries and benefits from unnecessary management, food service and aide staff with an offset increase in needed areas such as therapists and LPNs.
- Overall utilization is 97.5% and 98.5% for current year and year one, respectively, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	84.9%	84.4%
Medicare	9.5%	10.0%
Private/Other	5.6%	5.6%

- Breakeven utilization is 96.55 % or 70,482 inpatient days for the first year.

### Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interests is \$12,454,500 and will be met with \$2,100,000 held in escrow, \$2,588,900 equity from proposed members and a bank loan for \$7,765,500 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed Schnur Operations Associates LLC member, Kenneth Rozenberg, has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$3,356,465 based on two months of the first year's expenses. Working capital will be satisfied with \$1,678,232 equity from proposed members and the remaining \$1,678,233 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of Schnur Operations Associates LLC, reveals sufficient resources for stated levels of equity. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$6,366,733. It is noted that assets include \$12,454,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$6,087,267.

The submitted budget projects net income of \$406,010 for the first year. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of December 31, 2015, which shows the budgeted revenues would increase by \$837,291 resulting in a net income in year one of \$1,243,301. 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 C, financial summary of Schnurmacher Center for Rehabilitation and Nursing, indicates that the facility has maintained positive working capital, positive equity position and generated an average annual net operating loss of \$497,149 for the 2013-2014 period shown, and net operating income of \$555,467 as of December 31, 2015. The 2013-2014 operating loss was due to increases in corporate overhead expenses and losses from patient accounts.

BFA Attachments D, financial summary of the proposed members' affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown. In 2015, Kenneth Rozenberg and Beth Rozenberg obtained final PHHPC approval for membership interest in Hope Center for HIV & Nursing Care, a 66-bed RHCF located in the Bronx, and Kenneth Rozenberg and Jeffery Sicklick obtained final PHHPC approval for membership interest in Buffalo Center for Rehabilitation & Nursing, a 200-bed RHCF located in Buffalo. Kenneth Rozenberg has a 10% membership interest in Northwoods Rehab & Nursing Center at Moravia, a 40-bed RHCF located in Moravia. In 2016, the following RHCF applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are pending; CON 152295-Northern Riverview Health Care Center, Inc., a 180-bed RHCF located in Haverstraw; CON 152296-Northern Metropolitan Residential Health Care Facility, 120-bed RHCF located in Monsey; and CON 151260-Northern Manor Multicare Center, Inc., a 23-bed RHCF located in Nanuet.

Based on the preceding and subject to 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	Schnur Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	Light Property Holdings II Associates, LLC, Daryl Hagler Net Worth
BFA Attachment C	Financial Summary, Schnurmacher Center for Rehabilitation and Nursing
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedules
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Equity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



Project # 152227-E  
Pine Haven Operating, LLC d/b/a Pine Haven Home

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Columbia  
**Acknowledged:** October 21, 2015

**Executive Summary**

**Description**

Pine Haven Operating, LLC d/b/a Pine Haven Home, a New York limited liability company, requests approval to be established as the operator of Pine Haven Home, a 120-bed, Public County, Article 28 Residential Health Care Facility (RHCF) located at NY Route 217, Philmont (Columbia County). The County of Columbia is the current RHCF real property owner of the operator of the facility. There will be no change in beds or services provided.

On August 28, 2015, the County of Columbia entered into a Contract of Sale Agreement with 201 Main Street Realty, LLC for the sale and acquisition of the real estate on which Pine Haven Home is located. In addition, the County of Columbia entered into an Operations Transfer and Surrender Agreement with Pine Haven Operating, LLC for the acquisition of the operating interests of the RHCF. Both transactions are to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. The total purchase price for the property is \$6,500,000. There is a relationship between Pine Haven Operating, LLC and 201 Main Street Realty, LLC in that the entities have identical membership. The applicant will lease the facility from 201 Main Street Realty, LLC.

Ownership of the operations before and after the requested change is as follows:

Proposed Operator	
Pine Haven Operating, LLC	
Members:	%
Jacob Sod	47.5%
Jonathan Bleier	47.5%
Bruce Peckman	5.0%

Proposed Realty Owner	
201 Main Street Realty, LLC	
Members:	%
Jacob Sod	47.5%
Jonathan Bleier	47.5%
Bruce Peckman	5.0%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services as a result of this project. Pine Haven Home's occupancy was 94.5% in 2011, 93.7% in 2012, 91.8% in 2013 and 81.7% in 2014. Current occupancy, as of February 17, 2016, is 93.3%.

**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

201 Main Street, LLC, will purchase the real estate for \$6,500,000 with proposed members' equity of \$325,000 and a bank loan for \$6,175,000 at 7% interest for a five-year term. The applicant has submitted a bank letter of interest from Capital Funding, LLC. The projected budget is as follows:

Revenues:	\$12,659,500
Expenses:	<u>11,893,929</u>
Gain:	\$765,571



## 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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
10. Submission of each applicant's executed Medicaid Affidavit, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

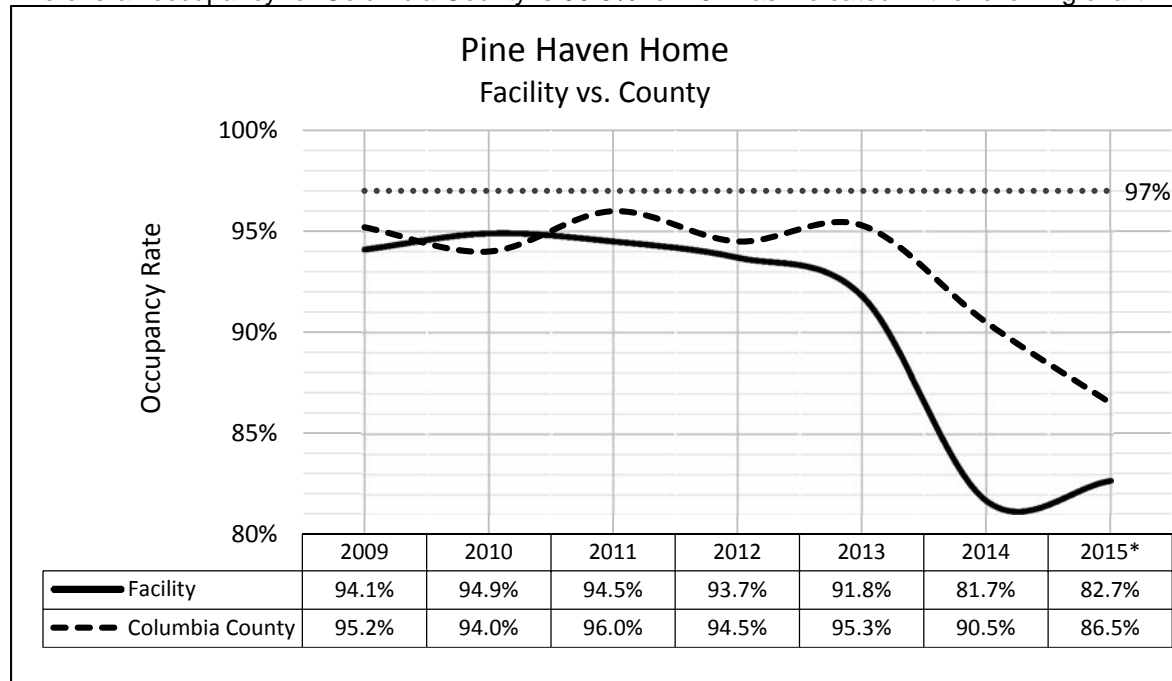
## Analysis

The need methodology indicates a need for 52 additional beds in Columbia County.

### RHCF Need – Columbia County

2016 Projected Need	667
Current Beds	596
Beds Under Construction	19
Total Resources	615
Unmet Need	52

The overall occupancy for Columbia County is 90.5% for 2014 as indicated in the following chart:



*\*unaudited; facility reported data*

The applicant attributes the decline in occupancy to the pending sale of the facility, a process which has been visible to the community given the county is the current operator. In 2014, Columbia County approved and released the RFP to privatize Pine Haven Home. During this time, there was opposition to the privatization on the part of the union representing county employees which generated negative press and a public campaign against the sale. The applicant states this resulted in community instability and decreased occupancy at the facility.

Once the contract of sale was executed on August 24, 2015, the proposed operator engaged in meaningful and positive dialogue with facility staff and began providing consulting services. Consulting services consisted of proposed improvements, updated billing practices, staff training and other critical assistance including implementation of a new admissions program and the hiring of additional admissions screeners as well as improved relationships with local hospitals and other upstream providers. The proposed operator's involvement in Pine Haven Home since late August 2015 has resulted in community stabilization and an increase in occupancy at the facility from 85.6% in August to 93.7% for the period of October 28, 2015 through February 17, 2016. Current CMI for the facility, effective July 1, 2015, is 1.1286 and, for the Medicaid-only population, 1.0924. This is a 22.9% increase from 0.9182 for the facility CMI and a 30.3% increase from 0.8385 for the Medicaid-only population as of July 1, 2013.

The applicant intends to increase occupancy in the following ways:

- Keep in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
  - Development of new and enhancement of existing care programs, including its Wound Care Program and short-term rehabilitation services; and
  - Partnership with hospitals, managed care plans and other long-term providers;
- Transform the care model to ensure residents served by the facility are truly in need of the level of care being provided at the RHCF;
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost savings to the Department;
- Hold meetings with local community leaders, hospitals and physicians to determine community and medical needs to develop specific programs and services for the facility;
- Employ the operator's internal corporate clinical team of experts to implement any and all of the identified needed specialties; and
- Utilize the operator's internal team of reimbursement experts to set up systems and procedures to guarantee the facility is up to date with the latest regulation and compliance rules.

#### 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.

Pine Haven Home's Medicaid admissions of 14.5% in 2012 and 26.8% in 2013 did not exceed the Columbia County 75% rate of 30.8% in 2012 but did exceed the 75% rate of 25.9% in 2013.

#### Conclusion

Approval is recommended as there is a continued need to strengthen the existing resources for the residents of Columbia County.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Pine Haven Home	Same
Address	NY Route 217 Philmont, NY. 12565	Same
RHCF Capacity	152	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Columbia	Pine Haven Operating, LLC
		<u>Members</u> Jonathan Bleier*      47.5% Jacob Sod*              47.5% Bruce Peckman        5.0%  *Managing Members

### Facilities Reviewed

#### Nursing Homes

Highfield Gardens Care Center of Great Neck	09/2010 to present
Westchester Center for Rehabilitation and Nursing	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center	12/2015 to present

#### Pennsylvania CCRC and Nursing Home (PA)

Deer Meadows Retirement Community	12/2014 to present
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#### Pennsylvania Nursing Home (PA)

Sunnyview Nursing and Rehabilitation Center	05/2014 to present
Rosewood Rehabilitation and Nursing Center	09/2015 to present
Meadow View Nursing	01/2016 to present

#### Massachusetts Nursing Home (MA)

Timberlyn Nursing and Rehabilitation Center	12/2014 to present
Great Barrington Rehabilitation and Nursing Center	08/2015 to present

#### Connecticut Nursing Homes (CT)

Fairview Health of Greenwich	10/2012 to present
Fairview Health of Southport	10/2012 to present

#### Florida Nursing Home (FL)

Fort Meyers Rehab	12/2015 to present
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#### Minnesota Nursing Homes (MN)

Crystal Care Center	12/2013 to 01/2015
Angels Care Center	12/2013 to 01/2015

#### NYS Ambulatory Service (EMS)

Citywide Mobile Response	04/2005 to present
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## Individual Background Review

Current facility ownership is shown in brackets.

**Jonathan Bleier** lists his employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleier discloses the following health facility ownership interests:

Highfield Gardens Care Center of Great Neck [16%]	09/2010 to present
Westchester Center for Rehabilitation and Nursing [54.96%]	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center [37%]	12/2015 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Citywide Mobile Response (EMS) [25%]	06/2004 to present

**Yaakov (Jacob) Sod** lists his employment as the Vice President of Acquisitions at Fairview Healthcare Management, a management service company located in Southport, Connecticut. He also lists employment at Milrose Capital, an investment group located in Monsey, New York. Mr. Sod discloses the following health facility ownership interests:

Greene Meadows Nursing and Rehabilitation Center [10%]	12/2015 to present
Fairview Health of Greenwich (CT)	10/2012 to present
Fairview Health of Southport (CT)	10/2012 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Meadow View Nursing (PA)	01/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Fort Meyers Rehab (FI)	12/2015 to present
Crystal Care Center (MN)	12/2013 to 01/2015
Angels Care Center (MN)	12/2013 to 01/2015

**Bruce Peckman** lists his employment as the Chief Executive Officer of Premiere Healthcare Management, LLC a healthcare consulting services company, since February 2015. Concurrently he is also the Chief Operating Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY since 2006. Mr. Peckman discloses the following health facility ownership interests:

Westchester Center for Rehabilitation and Nursing [10%]	05/2013 to present
Greene Meadows Nursing and Rehab [4%]	12/2015 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Highfield Gardens Care Center of Great Neck, Westchester Center for Rehabilitation and Nursing, and Greene Meadows Nursing and Rehabilitation for the time period indicated above reveals no enforcements.

An affidavit submitted by the applicant for Fairview Health in Greenwich, Connecticut indicates the following:

- An enforcement was of \$360 for class B violation of section 19a-527-1(b)(3) issued related to findings on 5/12/14.
- An enforcement was issued for a finding with a scope and severity level of G, at \$450 per day from 3/31/15 – 5/15/15 resulting in a total fine of \$12,285.

Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

An affidavit submitted by the applicant for Fairview Health of Southport, Connecticut indicates:

- A fine of \$260 was paid for smoking program violations found on 1/20/15.
- The facility was fined \$2,958 on 9/22/15 for findings related to care plan compliance, resident safety, door alarms, and elopement.

Since these enforcements are not repetitive in nature, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

An affidavit submitted by the applicant indicates that Rosewood Rehabilitation and Nursing Center, Deer Meadows Retirement Community, Meadow View Nursing, and Sunnyview Nursing and Rehabilitation Center in Pennsylvania for the time period indicated above reveals no enforcements were disclosed.

A review of operations and a statement provided by the applicant regarding Angels Care Center, and Crystal Care Center in Minnesota for the period indicated above reveals no enforcements.

An affidavit submitted by the applicant for Timberlyn Nursing and Rehabilitation Center and Great Barrington Rehabilitation and Nursing Center in Massachusetts for the periods identified above reveals no enforcements were disclosed.

A statement provided by the applicant for Fort Myers Rehab in Florida for the time period indicated above reveals no enforcements.

A review of operations for Citywide Mobile Response for the time periods indicated above reveals no enforcements.

#### Project Review

This application proposes to establish Pine Haven Operating, LLC d/b/a Pine Haven Home as the operator of Pine Haven Home. Pine Haven Home is currently operated by Columbia County.

No changes in the program or physical environment are proposed in this application. The proposed operator indicated that after assuming operations they will perform a full analysis and inspection of the physical plant and equipment. Currently the proposed operators intend to perform cosmetic renovations to update the resident rooms, hallways and lobby.

The applicant states that there are no anticipated consulting and administrative services agreements for the facility after establishment of the new operator. Both Premier Healthcare Management, LLC and Fairview Healthcare are management entities that are owned by some of the proposed members of Pine Haven Operating, LLC. Jonathan Bleier is a member and manager of Premier Healthcare Management, LLC. Premier provides certain off-premises, back office operations, including but not limited to, billing and collections, third party payor negotiations, and purchasing services. Jacob Sod lists his employment as the Vice President of Acquisitions of Fairview Healthcare Management, a management service company located in Southport, Connecticut.

#### 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

### Contract of Sale Agreement

The change in ownership of the realty will be effectuated in accordance with an executed contract of sale agreement, the terms of which are summarized below:

Date:	August 28, 2015
Seller :	Columbia County
Buyer:	201 Main Street Realty, LLC
Assets Acquired:	The property and all buildings, structures, facilities or improvements to the RHCF facility known as Pine Haven Home located on NY Route 217, Philmont, New York. All furniture, fixtures, equipment, permits, licenses, accounts receivable, and any other personal property attached or used in the operation or maintenance of the land/improvements/facility.
Excluded Assets:	The Fire Tower and Monument-Bell and Plaque to be removed by seller.
Assumption of Liabilities:	None
Purchase Price:	\$6,500,000
Additional Purchase Price:	At closing seller will pay an additional purchase price equal to an amount, which is 85% of the then current accounts receivable. (\$1,319,051 as of 10/31/2015.)
Payment of Purchase Price:	\$325,000 to be held in escrow with the remaining \$6,175,000 upon closing.

The real property will be purchased for \$6,500,000 with proposed members' equity of \$325,000 and a loan for \$6,175,000 financed at 7% interest with a five-year term. Capital Funding, LLC has provided a letter of interest for the loan.

### Operations Transfer and Surrender Agreement

The change in ownership of the operations will be effectuated in accordance with an executed Operations and Transfer Agreement, the terms of which are summarized below:

Date:	August 28, 2015
Transferor:	Columbia County
Transferee:	Pine Haven Operating, LLC
Surrender:	Transferor will cease operation of the facility and surrender all rights in and to the facility for the Transferee to commence operation of the facility as of the closing date.
Transferred Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets from Transfer:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Transferred Liabilities:	Those associated with purchased assets.
Excluded Liabilities from Transfer:	Transferor shall retain any Medicaid and/or Medicare liabilities for the period prior to the closing, accrued expenses which were incurred in the ordinary course of business of the Facility, Liens affecting the Transferee's Assets other than Permitted Encumbrances, any liability or obligation of Transferor arising out of or based upon Transferor's ownership and operation of the Facility prior to the Closing.



The Operations Transfer and Surrender Agreement and the Contract of Sale Agreement will occur simultaneously to ensure smooth transition of operations of the facility. There is no purchase price for the operations. Employment of the facility's current employees will be up to the new operator.

The proposed members have 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 the liability and responsibility. Currently, there are no outstanding Medicaid audit liabilities or assessments.

#### Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	NY Route 217, Philmont NY
Lessor:	201 Main Street Realty, LLC
Lessee:	Pine Haven Operating, LLC
Term:	5 years with a 3-year and a 2-year renewal for a total of 10 years. (Terms are structured in this manner as the Lessor intends to pursue a HUD mortgage, which may takes several years to finalize.)
Rental:	Amount equal to partial debt service of lessor due under the mortgage, which is \$715,000 per year.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. An affidavit has been submitted by the applicant attesting to the relationship between lessor and lessee.

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the current year (2014) and year one subsequent to change of ownership, summarized as follows:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues</u>				
Medicare	\$530.91	\$2,140,632	\$590.90	\$3,012,400
Medicaid	\$202.27	5,472,231	\$235.88	7,415,500
Commercial	\$328.81	70,365	\$374.98	1,115,200
Private Pay/Other	\$331.19	1,485,395	\$375.39	1,116,400
Total Revenues		\$9,168,623		\$12,659,500
<u>Expenses</u>				
Operating	\$314.49	\$11,254,010	\$258.80	\$10,994,400
Capital	3.90	139,403	21.17	899,529
Total Expenses	\$318.39	\$11,393,413	\$279.97	\$11,893,929
Net Income (Loss)		(\$2,224,790)		\$765,571
Total Patient Days		35,785		42,483
Occupancy %		81.7%		97.0%

The following is noted with respect to the submitted budget:

- Medicare revenues are based on the federal Medicare PPS rates in effect for 2014 plus Medicare Part B revenues and increased by 2% per annum for inflation.
- Medicaid revenues include the facility's current operating and capital components based on the 2015 Medicaid rate plus assessments.

- Private Pay/Other revenues are projected based on the payment rates for similar facilities in the same geographical area and increased by 2.5% per annum for inflation.
- Expenses are based on the 2014 experience of the current operator increased by 2% per annum. No staffing reductions are anticipated. The proposed operators expect to realize cost savings totaling \$259,610 based their experience successfully negotiating group-pricing reductions with suppliers at their other related entities. The same benefits in purchasing will extend to such items as negotiated group policies for its liability insurance and workers compensation.
- Utilization by payer source for current year and year one, is based on historical experience is expected as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicare	11.27%	12.00%
Medicaid	75.60%	74.00%
Private Pay/Other	13.13%	14.00%

- Breakeven utilization subsequent to change of ownership is projected at 91.13% for year one.

### Capability and Feasibility

There are no project costs associated with this application.

The real property will be purchased for \$6,500,000 with proposed realty members' equity of \$325,000 and a loan for \$6,175,000 financed at 7% interest with a five-year term. BFA Attachment A is a summary of the net worth of the proposed members, which indicates the availability of sufficient funds. A letter of interest has been submitted from Capital Funding, LLC for the loan.

Working capital requirements are estimated at \$1,982,322 based on two months of the first year budgeted expenses. Working capital will be met with a loan for \$633,000 at 5% for a 5-year term and members' equity of \$1,349,322. Capital Funding, LLC has submitted a letter of interest for the working capital loan. Proposed member, Jonathan Bleier, of Pine Haven Operating, LLC, has submitted an affidavit that states that he is willing to contribute resources disproportionate to his ownership percentages toward working capital requirements. BFA Attachment A is a summary of the net worth of the members of Pine haven Operating, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment B is the pro-forma balance sheet of Pine Haven Operating, LLC as of the first day of operations, which indicates positive members' equity of \$2,038,700.

The submitted budget indicates a net profit of \$765,571 for year one after the change in ownership. BFA Attachment E shows the variance between the current year net operating loss of \$2,224,790 and the first year budget net operating profit of \$765,571 is explained as follows:

- Revenue enhancements due to an increase in the current CMI, Medicare and Commercial Insurance rates and Medicare and Commercial days - \$1,284,148;
- Expense reductions due to no public union employee benefit contracts, group purchasing discounts, group therapy contracts, new vendors and group insurance policy savings - \$1,213,056; and
- The remaining \$493,157 is based on an increase in utilization.

DOH staff notes that the increase in utilization cannot be taken into account as fully recognized by the applicant, since it has not occurred prior to PHHPC approval. Therefore the budgeted revenues would decrease by \$493,157 resulting in a net profit in year one of \$272,414.

BFA Attachment F is a budget sensitivity analysis based on current utilization of the facility for a four month period as of January 20, 2016, which shows the budgeted revenues would increase by \$61,769 resulting in a net profit in year one of \$334,183 (based on the adjusted first year budgeted net profit). 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 C is the financial summary of Pine Haven Home for audited years 2013 and 2014 and internal statements as of October 31, 2015, which indicates that the facility has experienced negative working capital, negative equity position, and generated an average annual net loss from 2013-2014 of \$3,353,723 and a loss of \$2,801,250 as of October 31, 2015. The negative working capital, negative equity, and net losses are due to employee county benefits and additional long-term liabilities owed to Columbia County.

BFA Attachment D, proposed members' affiliated RHCfs, shows positive operating income for the years shown.-

Based on the preceding, and 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	Net Worth Statement for Pine Haven Operating, LLC
BFA Attachment B	Pro Forma Balance Sheet for Pine Haven Operating, LLC
BFA Attachment C	Pine Haven Home-Financial Summary, 2013- October 31, 2015
BFA Attachment D	Financial Summaries of Affiliated RHCfs
BFA Attachment E	Reconciliation of current RHCf Statement of Operations to First Year Budget Projection.
BFA Attachment F	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



Project # 152265-E  
Highland Care Center

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** November 20, 2015

**Executive Summary**

**Description**

Highland Care Center, a 320-bed, proprietary, Article 28 residential health care facility (RHCF) located at 91-31 175<sup>th</sup> Street, Jamaica (Queens County), requests approval to transfer 77% of the ownership interest of the operation from the existing sole stockholder, Milton Ostreicher, to seven new stockholders. The corporation currently has 200 outstanding shares. One hundred fifty-four (154) shares are being sold for a purchase price of \$14,667.95 per share for a total purchase price of \$2,258,864.58. There will be 200 outstanding shares after completion of the proposed transaction. There will be no change in services as a result of the shareholder change.

Ownership of the proprietary business corporation before and after the requested change is as follows:

<u>Current Owner</u>		
<u>Stockholder:</u>	<u>Shares</u>	<u>%</u>
Milton Ostreicher	200	100%

<u>Proposed Owners</u>		
<u>Stockholders:</u>	<u>Shares</u>	<u>%</u>
Milton Ostreicher	46	23%
David Lichtschein	46	23%
Matthew Ostreicher	18	9%
Adam Ostreicher	18	9%
Rebecca Berger	18	9%
Lara Ostreicher Klein	18	9%
Marc Jason Ostreicher	18	9%
Jacklyn Erlichman	<u>18</u>	<u>9%</u>
	200	100%

Proposed new stockholder Matthew Ostreicher has ownership interest in two other New York State RHCFs. BFA Attachments C and D present the ownership interest and financial summaries of the proposed shareholder's affiliated RHCFs.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no Need review of this project.

Program Summary  
No negative information has been received concerning the character and competence of the proposed new shareholders. 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 individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary  
There are no project costs associated with this transaction. The projected budget is as follows:

Revenues:	\$39,387,100
Expenses:	<u>\$35,655,801</u>
Gain:	\$3,731,299

## 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of Shareholder Affidavits, fully executed and notarized and in accordance with 10 NYCRR §620.3(a)(2) for stockholders Jaclyn Erlichman, Lara Ostreicher, and Adam Ostreicher [CSL]
3. Submission of a copy of a fully executed proposed certificate of amendment to the Certificate of Incorporation of Highland Care Center, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of a fully executed amendment to the By-laws of Highland Care Center, Inc., acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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

**April 14, 2016**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Highland Care Center	Same
Address	91-31 175 <sup>th</sup> Street Jamaica, NY 11432	Same
RHCF Capacity	320	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Highland Care Center Inc.	Same
	<u>Shareholder</u> Milton Ostreicher 100%	<u>Shareholders</u> * Milton Ostreicher 23% David Lichtschein 23% Matthew Ostreicher 9% Adam Ostreicher 9% Rebecca Berger 9% Lara Ostreicher Klein 9% Marc Jason Ostreicher 9% Jaclyn Erlichman 9% * Officer of Corporation

### Facility Review

Meadow Park Rehab and Health Care	2/2006 to present
Brookhaven Rehabilitation and Health Care Center	2/2006 to present

### Individual Background Review

**David Lichtschein** reports employment as clergy at Surf Manor Home for Adults since 2003. Mr. Lichtschein reports no health care facility interests.

**Matthew Ostreicher** reports employment as Director of Operations at Meadow Park Rehab and Health Care Center since 2001, Director of Purchasing at Beacon Rehabilitation and Nursing Center since 2006, and Consultant at Achieve Rehab and Nursing Facility since 2007. Matthew Ostreicher discloses 7.5% ownership interests in the following skilled nursing facilities.

Meadow Park Rehab and Health Care	1999 to present
Brookhaven Rehabilitation and Health Care Center	1999 to present

**Adam Ostreicher** is a New York State and New Jersey licensed attorney considered to be in good standing. Mr. Adam Ostreicher lists his employment since August of 2011 as Chief Operating Officer of Rytes Company which is a healthcare compliance and ethics consulting firm.

**Rebecca Berger** lists employment at the subject facility since September 2012 as a Cardio Rehab Assistant. Ms. Berger discloses no health facility interests.

**Lara Ostreicher Klein** has been employed as a Social Worker / Marketing at Highland Care Center since 2010. Ms. Klein holds a MSW from New York University School of Social Work. Ms. Ostreicher Klein discloses no health facility interests.

**Dr. Marc Jason Ostreicher** is a NYS licensed Medical Doctor in good standing. Dr. Marc Ostreicher reports employment as an attending physician at Five Town Medicine, PC Medical practice since July 2011. He discloses no ownership interests in health facilities.

**Jaclyn Erlichman** lists her employment as Admissions/Marketing at Highland Care Center, the subject facility since September 2011. Ms. Erlichman does not disclose any current interests in health facilities.

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the proposed applicants identified as new shareholders.

A review of the operations for Meadow Park Rehab and Health Care for the period identified above revealed that there were no enforcements.

A review of Brookhaven Rehabilitation and Health Care Center for the period identified above revealed the following:

- A federal CMP of \$28,925 was issued for a survey on 11/13/2006.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on 4/25/08. Deficiencies were found under 10 NYCRR 415.2 Quality of Care.

#### Project Review

This application proposes to transfer 76% ownership interest to seven new stockholders from the current sole stockholder. Milton Ostreicher has held ownership interest in this facility since 1990 and has been the sole shareholder subsequent to filing 90 day transfer notice in 2013. Milton Ostreicher will be the Officer of Highland Care Center Inc. Six of the applicants are the children of Milton Ostreicher; three of which are currently employed at the subject facility.

No changes in the program or physical environment are proposed in this application. The facility is in the process of completing a previously approved project to renovate and reconfigure the ground floor. The anticipated completion date is June 2016.

This application will not result in any new consulting or service agreements. The applicants have disclosed that Highland Care Center currently has consulting contracts currently in place with GHC Clinical Consultants LLC, Global Healthcare Fiscal Services Group LLC, and Global Healthcare Services Group LLC.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed shareholders. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Share Purchase Agreement

The applicant submitted executed share purchase agreements for the purchase of the stock, as detailed below:

Date: January 1, 2013			
Shareholders	Shares Purchased	%	Purchase Price
David Lichtschein	46	23%	\$674,725.44
Matthew Ostreicher	18	9%	\$264,023.19
Adam Ostreicher	18	9%	\$264,023.19
Rebecca Berger	18	9%	\$264,023.19
Lara Ostreicher Klein	18	9%	\$264,023.19
Marc Jason Ostreicher	18	9%	\$264,023.19
Jacklyn Erlichman	<u>18</u>	<u>9%</u>	<u>\$264,023.19</u>
Total Purchase Price	154	77%	\$2,258,864.58
Payment: Due in full no less than 2 days prior to closing			

BFA Attachment A is the personal net worth statements of the proposed new shareholders, which shows sufficient liquid resources overall to cover the purchase price. However, liquid resources may not be available in proportion to the proposed shareholders' ownership interest. Mr. Milton Ostreicher has provided a disproportionate share affidavit attesting to cover any potential equity shortfalls of the proposed new members.

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first year subsequent to the change in the stock ownership, summarized below:

	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
<b>Revenues</b>				
Medicaid Managed Care	\$273.79	\$21,833,880	\$291.49	\$25,758,100
Medicare Fee-For-Service	\$666.95	14,025,217	\$662.42	\$11,257,100
Commercial Fee-For-Service		\$0	\$291.42	\$1,650,900
Private Pay	\$323.26	2,700,844	\$315.00	\$713,800
Non-Operating Revenue		<u>\$7,499</u>		<u>\$7,200</u>
Total Revenues		\$38,567,440		\$39,387,100
<b>Expenses</b>				
Operating	\$310.79	\$33,916,396	\$300.96	\$34,096,600
Capital	<u>\$14.29</u>	<u>\$1,559,252</u>	<u>\$13.76</u>	<u>\$1,559,201</u>
Total Expenses	\$325.08	\$35,475,648	\$314.72	\$35,655,801
Net Income		\$3,091,792		\$3,731,299
Utilization (patient days)		109,130		113,293
Occupancy		93.43%		96.73%
Breakeven Occupancy				87.57%



The following is noted with respect to the submitted budget:

- Revenue assumptions for Medicaid, Medicare and Private Pay are based on the operator's current payment rates. The Medicaid rate for year one is based on the 2014 paid rate plus an estimated 6% add-on for cash receipts assessment. The facility has recently added commercial pay patients and payor rates to their payment structure going forward, and the projected rate is reasonable.
- Expense assumptions are based on the historical experience of the facility.
- Utilization by payor source during the current year (2014) and anticipated for the first year after the transfer of stock is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Medicaid Managed Care	73%	78%
Medicare Fee-For-Service	19%	15%
Commercial Fee-For-Service	0%	5%
Private Pay	8%	2%

- Breakeven occupancy is 87.57% or 102,282 patient days.

The budget is reasonable.

#### Capability and Feasibility

The proposed new shareholders will purchase their respective shares for a total purchase price of \$2,258,864.58. David Lichtschein will pay \$674,725.44 for 46 shares and each of the remaining proposed shareholders will pay \$264,023.19 for the purchase of 18 shares each. Executed share purchase agreements have been submitted.

Working capital requirements are estimated at \$5,942,634 based on two months of first year expenses, and will be satisfied with \$2,971,317 from the proposed shareholders' equity, with the remaining \$2,971,317 to be financed via a working capital loan at 4.66% interest for three years. Tunic Capital, LLC has provided a letter of interest at the stated terms. BFA Attachment A is the personal net worth statements of the proposed new shareholders, which shows sufficient liquid assets overall to cover all aspects of the application. However, liquid resources may not be available in proportion to the proposed shareholders' ownership interest. Mr. Milton Ostreicher has provided a disproportionate share affidavit attesting to cover any potential purchase price or working capital equity shortfalls of the proposed new members. BFA Attachment A shows that Milton Ostreicher has sufficient liquid resources available to cover any equity shortfall of the proposed new stockholders.

The submitted budget indicates a net income of \$3,731,299 during the first year after the change in stock ownership. The submitted budget is 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 Highland Care Center from 2013 through September 30, 2015. As shown, the facility had an average negative working capital position and an average negative net asset position for the period. The reason for the average negative working capital position is due to an increase in accounts payable associated with necessary renovations to the facility to improve the overall operations. Also, the facility achieved an average net income of \$1,719,225 from 2013 through September 30, 2015.

BFA Attachment D is the 2013-2015 financial summaries of Matthew Ostreicher's affiliated nursing homes, which indicates the following:

- Meadow Park had an average positive working capital position and an average negative net asset position for the period shown. The facility also achieved an average net loss of \$125,349 for the period shown. The 2013 loss is due to issues with the processing of the CMI rate for the facility. The loss was a one-time event that has been rectified.
- Brookhaven Rehab had an average negative working capital position and a positive net asset position for the period shown. The facility also achieved an average net income of \$1,347,210 for the period. The negative working capital position is due to a current liability of \$14,491,252 listed as Due to Realty. This liability should be classified as a long term liability, as this is the remaining debt left on their related company's purchase of the nursing home property bought in January 2015. The loan for the purchase was \$15,000,000 with a 9% interest rate. If this liability were classified correctly, the facility would have had a positive working capital position for the period shown.

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

Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Personal Net Worth Statements of Shareholders
BFA Attachment B	2013-9/30/2015 Certified and Internal Financial Summary- Highland Care Center
BFA Attachment C	Related Company Ownership of the members' of Highland Care Center
BFA Attachment D	Financial Summaries of the members' of Highland Care Center affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 152380-E**  
**Genesee Center Operating, LLC**  
**d/b/a Genesee Center for Nursing and Rehabilitation**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Genesee  
**Acknowledged:** December 28, 2015

**Executive Summary**

**Description**

Genesee Center Operating, LLC d/b/a Genesee Center for Nursing & Rehabilitation, a New York limited liability company, requests approval to be established as the operator of Genesee County Nursing Home, a 160-bed, public (county) Article 28 Residential Health Care Facility (RHCF) located at 278 Bank Street, Batavia (Genesee County). The facility also operates an on-site, 13-slot Adult Day Health Care Program (ADHCP). The County of Genesee is the current RHCF real property owner and operator of the facility. There will be no change in beds or services provided.

On September 10, 2015, the County of Genesee entered into a Contract of Sale with Batavian Realty, LLC for the sale and acquisition of the real property related to Genesee County Nursing Home. The Contract of Sale includes the 160-bed RHCF and on-site 13-slot ADHC program, plus the 80-bed Adult Home that the County also operates at 278 Bank Street, Batavia, NY. The Adult Home, Genesee County Assisted Living and Special Needs Residence, is certified for 80 Assisted Living Residence beds, which includes a 40-bed Special Needs program. A corresponding application for the change in ownership of the Adult Home is under review by the Division of Adult Care Facilities and Assisted Living (Project # 3050). The proposed new operator of the Adult Home is Genesee Center Operating II, LLC.

Concurrently on September 10, 2015, the County of Genesee entered into an Operations Transfer and Surrender Agreement with

Genesee Center Operating, LLC for the acquisition of the operating interests of the RHCF. Both transactions are to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. The total purchase price for the property is \$15,200,000 broken down as follows: Realty-\$14,536,000, Adult Home-\$270,000 and ADHC-\$394,000. There is a relationship between Genesee Center Operating, LLC and Batavian Realty, LLC in that the entities have identical membership. The applicant will lease the RHCF facility from Batavian Realty, LLC.

Ownership of the operation before and after the requested change is as follows:

Proposed Operator	
<u>Genesee Center Operating, LLC</u>	
<u>Members:</u>	<u>%</u>
Jacob Sod	35.0%
Jonathan Bleier	35.0%
Bernard Fuchs	30.0%

Proposed Property Owner	
<u>Batavian Realty, LLC</u>	
<u>Members:</u>	<u>%</u>
Jacob Sod	35.0%
Jonathan Bleier	35.0%
Bernard Fuchs	30.0%

OPCHSM Recommendation  
Contingent Approval

### Need Summary

There will be no changes to beds or services as a result of this project. Genesee County Nursing Home's occupancy was 95.4% in 2012, 95.3% in 2013 and 96.6% in 2014. Current occupancy as of February 3, 2016, is 97.5%.

### 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

Batavian Realty, LLC will purchase the real estate for \$15,200,000 to be funded with \$2,280,000 equity from the proposed members and a bank loan for \$12,920,000 at 8% interest for a 20-year term. A letter of interest from Meridian Capital Group, LLC has been submitted by the applicant. The projected budget is as follows:

Revenues:	\$14,461,600
Expenses:	<u>14,365,763</u>
Gain:	\$95,837

## 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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of 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]
6. 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]
7. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's signed Certificate of Assumed Name, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**April 14, 2016**

# Need Analysis

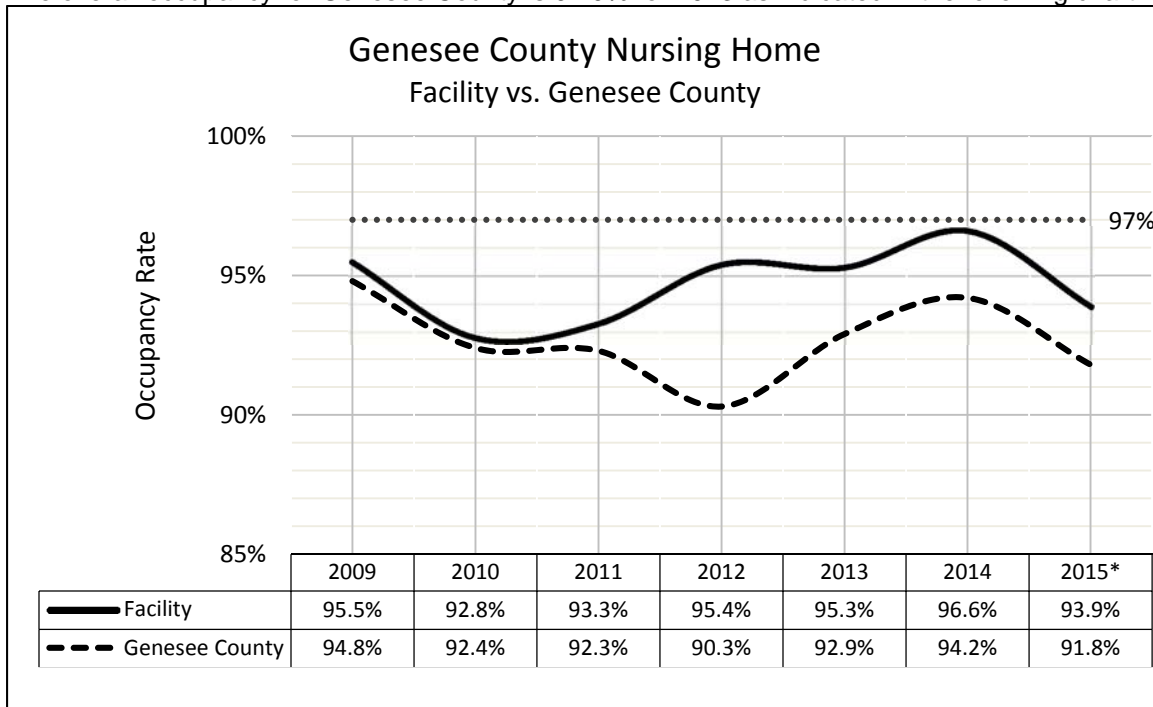
## Analysis

The need methodology indicates a need for 57 additional beds in Genesee County.

### RHCF Need – Genesee County

<b>2016 Projected Need</b>	545
<b>Current Beds</b>	488
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	488
<b>Unmet Need</b>	57

The overall occupancy for Genesee County is 92.9% for 2013 as indicated in the following chart:



\*unaudited, facility reported data

Current occupancy as of February 3, 2016 is 97.5%. The proposed operators intend to use their past experience to increase and maintain occupancy by:

- Meeting with local community leaders, hospitals and physicians to identify and develop short and long term nursing facility programs to address the needs of the community; and
- Utilize an internal team of Medicare, HMO and Medicaid reimbursement experts to set up systems and procedures to ensure maximization and appropriate coding.

## 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 has 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.

Genesee County Nursing Home's Medicaid admissions of 15.5% and 14.5% in 2012 and 2013, respectively, exceeded Genesee County's 75% rates of 9.9% and 8.1% in 2012 and 2013, respectively.

**Conclusion**

Approval of this application will maintain a resource for the Medicaid population in the community.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	Existing	Proposed
Facility Name	Genesee County Nursing Home	Genesee Center for Nursing and Rehabilitation
Address	278 Bank Street Batavia, NY 14020	Same
RHCF Capacity	160	Same
ADHC Program Capacity	13	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Genesee	Genesee Center Operating, LLC  <div style="margin-left: 20px;"> <u>Members</u>  Jonathan Bleier*            35.0%  Jacob Sod                      35.0%  Bernard Fuchs                30.0%   *Managing Member </div>

**Facilities Reviewed**

Nursing Homes

Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Greene Meadows Nursing and Rehabilitation Center	12/2015 to present
Highfield Gardens Care Center of Great Neck	09/2010 to present
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Hudson Pointe at Riverdale Center for Nursing and Rehab	03/2006 to 08/2010
The Pavillion at Queens Rehabilitation and Nursing	01/2015 to present
The Villages of Orleans Health and Rehabilitation Center	01/2015 to present
Westchester Center for Rehabilitation and Nursing	05/2013 to present

Pennsylvania CCRC and Nursing Home

Deer Meadows Retirement Community	12/2014 to present
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Pennsylvania Nursing Homes

Rosewood Rehabilitation and Nursing Center	09/2015 to present
Sunnyview Nursing and Rehabilitation Center	05/2014 to present
Meadow View Nursing	01/2016 to present



Massachusetts Nursing Homes

Great Barrington Rehabilitation and Nursing Center 08/2015 to present  
Timberlyn Nursing and Rehabilitation Center 12/2014 to present

Connecticut Nursing Homes

Fairview Health of Greenwich 10/2012 to present  
Fairview Health of Southport 10/2012 to present

Florida Nursing Home

Fort Meyers Rehab 12/2015 to present

Minnesota Nursing Homes

Angels Care Center 01/2013 to 01/2015  
Crystal Care Center 01/2013 to 01/2015

NYS Ambulatory Service

Citywide Mobile Response (EMS) 04/2005 to present

Individual Background Review

Current facility ownership is shown in brackets.

**Jonathan Bleier** lists his employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleir discloses the following health facility ownership interests:

Highfield Gardens Care Center of Great Neck [16%]	09/2010 to present
Westchester Center for Rehabilitation and Nursing [54.96%]	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center [37%]	12/2015 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Citywide Mobile Response (EMS) [25%]	06/2004 to present

**Yaakov (Jacob) Sod** lists his employment as the Vice President of Acquisitions at Fairview Healthcare Management, a management service company located in Southport, Connecticut. He also lists employment at Milrose Capital, an investment group located in Monsey, New York. Mr. Sod discloses the following health facility ownership interests:

Greene Meadows Nursing and Rehabilitation Center [10%]	12/2015 to present
Fairview Health of Greenwich (CT)	10/2012 to present
Fairview Health of Southport (CT)	10/2012 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Meadow View Nursing (PA)	01/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Fort Meyers Rehab (FL)	12/2015 to present
Crystal Care Center (MN)	12/2013 to 01/2015
Angels Care Center (MN)	12/2013 to 01/2015

**Bernard Fuchs** lists concurrent employment as Principal at Platinum Management (NY) LLC, the CEO of Kennedy Management, LLC which he lists as a healthcare company and Chief Investment Officer at Tiferes Investors LLC, an investment company located in Lawrence, New York. Mr. Fuchs discloses the following ownership interests in health facilities:

Greene Meadows Nursing and Rehabilitation [45%]	12/2015 to present
Hudson Pointe at Riverdale Center for Nursing and Rehab [50%]	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare [3%]	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare [5%]	01/2012 to present
The Villages of Orleans Health and Rehabilitation Center [100%]	01/2015 to present
The Pavillion at Queens Rehabilitation and Nursing [50%]	01/2015 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Hopkins Center for Rehabilitation and Healthcare for the period identified above reveals

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR (h)(1)(2) – Quality of Care: Accidents and 10 NYCRR 415.26 – Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(l)(ii) – Right to Refuse; Formulate Advanced Directives.

The enforcements indicated above are not recurrent in nature, therefore the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Bensonhurst Center for Rehabilitation and Healthcare, Greene Meadows, Highfield Gardens Care Center of Great Neck, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, The Pavilion at Queens for Rehabilitation and Nursing, The Villages of Orleans Health and Rehabilitation Center, and Westchester Center for Rehabilitation and Nursing, for the time period indicated above, reveals no enforcements.

An affidavit submitted by the applicant for Fairview Health in Greenwich, Connecticut indicates the following:

- An enforcement was of \$360.00 for class B violation of section 19a-527-1(b)(3) issued related to findings on 5/12/14.
- An enforcement was issued for a finding with a scope and severity level of G, at \$450 per day from 3/31/15 – 5/15/15 resulting in a total fine of \$12,285.

Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

An affidavit submitted by the applicant for Fairview Health of Southport, Connecticut indicates:

- A fine of \$260 was paid for smoking program violations found on 1/20/15.
- The facility was fined \$2,958 on 9/22/15 for findings related to care plan compliance, resident safety, door alarms, and elopement.

Since these enforcements are not repetitive in nature, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

An affidavit submitted by the applicant indicates that Rosewood Rehabilitation and Nursing Center, Deer Meadows Retirement Community, and Meadow View Nursing, Sunnyview Nursing and Rehabilitation Center in Pennsylvania for the time period reveals no enforcements were disclosed.

A review of operations and a statement provided by the applicant regarding Angels Care Center, and Crystal Care Center in Minnesota for the period indicated above reveals no enforcements were disclosed.

An affidavit submitted by the applicant for Timberlyn Nursing and Rehabilitation Center and Great Barrington Rehabilitation and Nursing Center in Massachusetts for the periods identified above reveals no enforcements were disclosed.

A statement provided by the applicant for Fort Myers Rehab in Florida for the time period indicated above reveals no enforcements.

A review of operations for Citywide Mobile Response for the time periods indicated above reveals no enforcements.

#### Project Review

This application proposes to establish Genesee Center Operating, LLC as the new operator of the 160-bed residential health care facility located at 278 Bank Street, Batavia which is currently operated as the Genesee County Nursing Home. The facility will be operated as Genesee Center for Nursing and Rehabilitation as a result of the transaction.

No changes in the program or physical environment are proposed in this application. The current program includes an onsite adult day health care program with a capacity of thirteen attendees. The facility is also currently licensed to provide outpatient physical, occupational, and speech/ language pathology.

The applicant states that there are no anticipated consulting and administrative services agreements for the facility after establishment of the new operator. Both Premier Healthcare Management, LLC and Fairview Healthcare are management entities that are owned by some of the proposed members of Pine Haven Operating, LLC. Jonathan Bleier is a member and manager of Premier Healthcare Management, LLC. Premier provides certain off-premises, back office operations, including but not limited to, billing and collections, third party payor negotiations, and purchasing services. Jacob Sod lists his employment as the Vice President of Acquisitions of Fairview Healthcare Management, a management service company located in Southport, Connecticut.

#### 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

### Contract of Sale Agreement

The change in ownership of the realty will be effectuated in accordance with an executed contract of sale agreement, the terms of which are summarized below:

Date:	September 10, 2015
Seller :	Genesee County
Buyer:	Batavian Realty, LLC
Assets Acquired:	The property and all buildings, structures, facilities or improvements to the RHCf facility known as Pine Haven Home located at 278 Bank Street, Batavia, New York. All furniture, fixtures, equipment, permits, licenses, accounts receivable and any other personal property attached or used in the operation or maintenance of the land/improvements/facility.
Excluded Assets:	None
Assumption of Liabilities:	None
Purchase Price:	\$15,200,000
Payment of Purchase Price:	\$1,420,000 held in escrow with the remaining \$13,780,000 due upon closing.

The Contract of Sale is for the realty related to the 160-bed RHCf, the 13-registrant ADHC program, and the 80-bed Adult Home. The property will be purchased for \$15,200,000 funded with proposed member's equity of \$2,280,000 and a loan for \$12,920,000 financed at 8% interest for a 20-year term. Meridian Capital Group, LLC has provided a letter of interest for the loan.

### Operations Transfer and Surrender Agreement

The change in ownership of the operations will be effectuated in accordance with an executed Operations and Transfer Agreement, the terms of which are summarized below:

Date:	September 10, 2015
Transferor:	Genesee County
Transferee:	Genesee Center Operating, LLC
Surrender:	Transferor will cease operation of the facility and surrender all rights in and to the facility for the Transferee to commence operation of the facility as of the closing date.
Transferred Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets from Transfer:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Transferred Liabilities:	Those associated with purchased assets.
Excluded Liabilities from Transfer:	Transferor shall retain any Medicaid and/or Medicare liabilities for the period prior to the closing, accrued expenses which were incurred in the ordinary course of business of the Facility, Liens affecting the Transferee's Assets other than Permitted Encumbrances, any liability or obligation of Transferor arising out of or based upon Transferor's ownership and operation of the Facility prior to the Closing.

The Operations Transfer and Surrender Agreement and the Contract of Sale Agreement will occur simultaneously to ensure smooth transition of operations of the facility. Employment of the facility's current employees will be up to the new operator.

The proposed members have 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 the liability and responsibility. Currently, there are no outstanding Medicaid audit liabilities or assessments.

#### Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	278 Bank Street, Batavia, NY
Lessor:	Batavian Realty, LLC
Lessee:	Genesee Center Operating, LLC
Term:	5 years with a 3-year and a 2-year renewal for a total of 10 years. (The lease terms are structured in this manner as the Lessor intends to pursue a HUD mortgage, which may take several years to finalize.)
Rental:	Amount equal to debt service of lessor due under the mortgage and refinancing of the acquisition, which is \$1,318,800 per year.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. An affidavit has been submitted by the applicant attesting to the relationship between lessor and lessee.

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for current year (2014) and year one subsequent to change of ownership, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>RHCF Revenues</u>				
Medicare	\$439.81	\$1,901,302	\$510.05	\$2,599,900
Medicaid	\$196.28	9,208,633	\$211.98	9,967,000
Commercial	\$350.98	160,400	\$357.04	809,000
Private Pay/Other	\$348.64	<u>1,640,332</u>	\$357.55	<u>810,200</u>
Total RHCF Revenues		\$12,910,667		\$14,186,100
<u>RHCF Expenses</u>				
Operating	\$260.29	\$14,680,794	\$225.60	\$12,779,668
Capital	<u>13.34</u>	<u>752,145</u>	<u>25.77</u>	<u>1,460,126</u>
Total RHCF Expenses	\$273.63	\$15,432,939	\$251.37	\$14,239,794
<u>ADHCP Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid	\$72.28	\$114,567	\$90.35	\$249,500
Private Pay	\$72.28	<u>8,312</u>	\$90.35	<u>26,000</u>
Total ADHCP Revenues		\$122,879		\$275,500
<u>ADHCP Expenses</u>				
Operating	\$65.45	\$111,269	\$36.48	\$111,269
Capital	<u>7.32</u>	<u>12,440</u>	<u>4.62</u>	<u>14,700</u>
Total ADHCP Expenses	\$72.77	<u>\$123,709</u>	\$41.10	<u>\$125,969</u>

Total Revenues	\$13,033,546	\$14,461,600
Total Expenses	<u>\$15,556,648</u>	<u>\$14,365,763</u>
Net Income (Loss)	<u>(\$2,523,102)</u>	<u>\$95,837</u>
Total Patient Days	56,401	56,647
ADHCP visits	1,700	3,050
RHCF Occupancy %	96.58%	97.36%

The following is noted with respect to the submitted budget:

- The first year Medicare rates are based on federal Medicare PPS in effect for 2015 plus Medicare Part B revenues and increased by 1% per annum for inflation.
- Medicaid revenues include the facility's current operating and capital components based on the 2015 Medicaid rate plus assessments.
- Commercial and Private Pay/Other rates are increased by 1.0% per annum for inflation.
- Expenses are based on the 2014 experience of the current operator for the RHCF and AHDCP. The net loss does not include the Adult Home, which is the difference between the audited 2014 total net loss and the current year.
- The difference between the 2014 net loss and first year budgeted net income is due to revenue enhancements through increase PPS rates by CMS as of 10/1/2015, an increase in CMI as shown in the 2016 Medicaid measurement, a reduction in union salaries and benefits, a reduction in expenses due to better negotiated contracts for purchased services and a change in vendors for better contract pricing.
- The first year budget takes into consideration the increased capital expenses due to the rental expense on the new mortgage through the lease payments.
- RHCF Utilization by payer source for current year and year one, based on historical experience, is expected as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicare	7.70%	9.00%
Medicaid	83.20%	83.00%
Private Pay/Other	9.10%	8.00%

- Breakeven utilization for the RHCF subsequent to the change of ownership is projected at 97.36% for year one.

#### Capability and Feasibility

There are no project costs associated with this application.

The real property will be purchased for \$15,200,000 with proposed members' equity of \$2,280,000 and a loan for \$12,920,000 financed at 8% interest with a 20-year term. A letter of interest has been submitted from Meridian Capital Group, LLC for the loan. Bernard Fuchs, proposed Genesee Center Operating, LLC and Batavian Realty, LLC member, has submitted an affidavit stating he is willing to contribute resources disproportionate to his ownership interest toward the real property purchase. BFA Attachment A is a summary of the net worth of the proposed members of Genesee Center Operating, LLC, which indicates the availability of sufficient funds.

Working capital requirements are estimated at \$2,394,294 based on two months of the first year budgeted expenses. Working capital will be met with a loan of \$1,170,000 and members' equity of \$1,224,294. A letter of interest has been submitted from Capital Finance, LLC for the working capital loan at 6% over 3 years. Bernard Fuchs, proposed operating and realty entity member, has submitted an affidavit stating he is willing to contribute resources disproportionate to his ownership interest toward the working capital requirements. Review of BFA Attachment A indicates the availability of sufficient funds for working capital. BFA Attachment B is the pro-forma balance sheet of Genesee Center Operating, LLC as of the first day of operations, which indicates positive members' equity of \$1,595,000.

The submitted budget indicates a net profit of \$95,837 for Year One after the change in ownership. BFA Attachment E shows the variance between the current year net operating loss of \$2,846,705 from 2014 audited financial statements and the first year budget net operating profit of \$95,837 is explained as follows:

- Revenue enhancements due to an increase in the current CMI, Medicare and Commercial Insurance rates and Medicare and Commercial days - \$1,154,421.
- Expense reductions due to no employee union contract, group purchasing, group therapy contracts, new vendors and group insurance policies - \$2,173,738.
- The remaining \$756,142 is based on an increase in additional capital expenses and is offset against the increases above.
- Loss allocated to Genesee County Adult Home - \$370,525.

BFA Attachment F is a budget sensitivity analysis based on the current utilization of the facility for a four month period as of October 31, 2015, which shows the budgeted revenues would decrease by \$88,649 resulting in a net profit in year one of \$7,188 (based on the adjusted first year budgeted net profit). 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 C is the financial summary of Genesee County Nursing Facility for audited years 2013 and 2014 and the internal statements as of October 31, 2015, which indicates that the facility has experienced negative working capital, negative equity position and generated average annual net losses of \$3,575,653 from 2013-2014 and \$1,739,057 as of October 31, 2015. The negative working capital, net equity and net losses are due to county employee fringe benefit costs and additional long-term liabilities owed to Genesee County.

BFA Attachment D, proposed members' affiliated RHCFS, shows positive operating income for the years shown.

Based on the preceding, and 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	Net Worth Statement for Genesee Center Operating, LLC
BFA Attachment B	Pro Forma Balance Sheet for Genesee Center Operating, LLC
BFA Attachment C	Genesee County Nursing Home-Financial Summary, 2013- October 31, 2015
BFA Attachment D	Financial Summaries of Affiliated RHCFS
BFA Attachment E	Reconciliation of current RHCFS Statement of Operations to First Year Budget Projection.
BFA Attachment F	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



Project # 152381-E
Silver Lake Specialized Rehabilitation and Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Richmond
Acknowledged: December 28, 2015

Executive Summary

Description

Silver Lake Specialized Rehabilitation and Care Center, LLC, a 278-bed Article 28 residential health care facility (RHCF) located at 275 Castleton Avenue, Staten Island (Richmond County), requests approval to transfer 41% ownership interest from one existing member to one new member. The consideration for the transfer is \$100 to be paid by Hershie Weingarten to Simone Kraus. There will be no change in services provided.

Ownership of the operations before and after the requested change is as follows:

Table with 2 columns: Members, %
Current Operator: Silver Lake Specialized rehabilitation and Care Center, LLC
Members: Simone Kraus (Manager) 91%, Rosemarie Weingarten 9%

Table with 2 columns: Members, %
Proposed Operator: Silver Lake Specialized rehabilitation and Care Center, LLC
Members: Simone Kraus (Manager) 50%, Hershie Weingarten 41%, Rosemarie Weingarten 9%

BFA Attachment C provides the ownership interest and financial summary of the proposed new member's affiliated RHCF.

OPCHSM Recommendation
Approval

Need Summary

There will be no Need review for this project.

Program Summary

No negative information has been received concerning the character and competence of the proposed new member. 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

There are no project costs associated with this transaction. No budget analysis was necessary as this is a transfer of 41% ownership interest in the RHCF to a family member for \$100, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

1. The project must be completed within one year 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

**April 14, 2016**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Silver Lake Specialized Rehabilitation and Health Care Center	Same
Address	275 Castleton Avenue Staten Island, NY 10301	Same
RHCF Capacity	278	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Silver Lake Specialized Rehabilitation and Care Center, LLC  <u>Members</u> Rosemarie Weingarten 9% Simone Kraus 91%	Same  <u>Members</u> Rosemarie Weingarten 9% Hershie Weingarten 41% *Simone Kraus 50% * Managing Member

### Facility Review

Pelham Parkway Nursing Home	4/14 to present
Silver Lake Specialized Care Center	3/06 to 6/08

### Individual Background Review

**Hershie Weingarten** is a licensed attorney in the state of New York and Illinois in good standing. Mr. Weingarten is also a licensed real estate broker in Illinois. Mr. Weingarten reports that he is self-employed at Weingarten and Adler a law firm located in Chicago, Illinois, since 2003. Mr. Weingarten discloses the following interests in health care facilities:

Pelham Parkway Nursing Home	4/14 to present
Silver Lake Specialized Care Center	7/94 to 6/08

### Character and Competence Analysis

A review of operations for Pelham Parkway Nursing Home, and Silver Lake Specialized Care Center for the periods identified above, revealed that there were no enforcements.

### Project Review

This application proposes to transfer 41% ownership interest from one (1) existing member to one (1) new member. Simone Kraus, is transferring 41% of her membership interest in the company to her brother, Hershie Weingarten. Rosemarie Weingarten, Hershie Weingarten and Simone Kraus are relatives. This family has had holdings in this facility since the 1990's.

This facility is currently certified to provide care for 40 ventilator dependent individuals. No changes in the program or physical environment are proposed in this application. The applicant reports that no consulting and service agreements are contemplated as a result of 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 applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Assignment and Assumption Agreement

An executed Assignment and Assumption Agreement was submitted for the operations related to the RHCF as follows:

Date:	November 30, 2015
Assignor:	Simone Kraus
Assignee:	Hershie Weingarten
Rights assigned:	Assignment of 41% of the membership interests and assignor's rights to the assignee for the facility.
Consideration:	\$100 cash, already paid in full.

### Capability and Feasibility

There are no project costs associated with this transaction. This application is a transfer of 41% ownership interest in the RHCF to a family member for \$100. BFA Attachment A is the personal net worth statement of Hershie Weingarten, the proposed member, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is a transfer of the 41% ownership interest in the RHCF to a family member, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

BFA Attachment B is the 2013-2014 audited financial summary of Silver Lake Specialized Rehabilitation and Care Center and the internal financials of the RHCF as of September 30, 2015. As shown, the facility has experienced an average negative working capital position and maintained an average positive net asset position. The negative working capital is due to the facility lagging in paying their vendors. Recent improvements have been made in paying vendors and certain long standing vendors were replaced with those that offered more favorable pricing, which will decrease the negative working capital over time. Also, the facility achieved an average net income of \$1,006,338 as of September 30, 2015.

BFA Attachments C, financial summary of the proposed member's affiliated RHCF, shows the facility has maintained positive net income from operations for the periods shown.

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

Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Proposed New Member's Net Worth
BFA Attachment B	Financial Summary, Silver Lake Specialized Rehabilitation and Care Center
BFA Attachment C	Affiliated Residential Health Care Facility
BNHLC Attachment A	Quality Measures and Inspection Report

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Sarene Services, Inc. d/b/a Sarene Home Nursing Agency  
Address: Medford  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 2412-L

Description of Project:

Sarene Services, Inc. d/b/a Sarene Home Nursing Agency, 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.

Sarene Services, Inc. d/b/a Serene Home Nursing Agency was previously approved as a home care services agency by the Public Health Council at its November 16, 2007 meeting and subsequently licensed 1549L001. At that time it was owned as follows: Salvatore Gerbino – 100 shares and Irene Manolias – 100 shares. On October 9, 2009, Salvatore Gerbino transferred 9% of his shares to Christopher Mackie. The ownership as of October 9, 2009 was as follows Salvatore Gerbino – 82 shares, Irene Manolias – 100 shares and Christopher Mackie – 18 shares.

In January 2013, by court order Salvatore Gerbino signed over all of his rights and shares of Sarene Services, Inc. back to the corporation in return for the settlement figure of \$88,000.00. Through a settlement agreement dated May 6, 2013, upon the execution of the agreement, Salvatore Gerbino shall execute a written resignation effectively resigning as a shareholder, officer, director, agent, and/or representative of Sarene Services, Inc. as of December 31, 2012. The settlement agreement required that the resignation be held in escrow by counsel for Salvatore Gerbino until such time as Indebtedness is paid in full.

The applicant has authorized 200 shares of stock, which are owned as follows:

Irene Manolias – 170 Shares                      Christopher W. Mackie – 30 Shares

The Board Member of Sarene Services, Inc. d/b/a Sarene Home Nursing Agency comprises the following individuals:

Irene Manolias – President                      Christopher W. Mackie – Vice President  
President, Triple A Pools

Irene Manolias is exempt from character and competence review due to the fact that she was previously approved by the Public Health 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 review Sarene Services, Inc. d/b/a Serene Home Nursing Agency (July 2009-Present) was conducted as part of this review.

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 continue to serve the residents of the following counties from an office located at 3235 Route 112, Suite #2, Medford, New York 11763.

Nassau                      Suffolk

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Occupational Therapy	Physical Therapy	Speech-Language Pathology

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:                      March 4, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Concepts of Health Care, Inc.  
Address: Ballston Spa  
County: Saratoga  
Structure: For-Profit Corporation  
Application Number: 151322

Description of Project:

Concepts of 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.

Concepts of Health Care, Inc. was previously approved by the Public Health Council at its January 19, 1990 meeting and subsequently licensed 0047L001.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Elizabeth A. Doyle – 190 shares  
Business Administrator, Concepts of Health Care, Inc.

10 shares remain unissued.

The Board of Directors of Concepts of Health Care, Inc. is comprised of:

Elizabeth A. Doyle – President/Vice President/Treasurer/Secretary  
(Previously Disclosed)

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 continue to serve the residents of the following counties from an office located at 10 Deerfield Place, Ballston Spa, New York 12020:

Albany	Fulton	Montgomery	Rensselaer
Saratoga	Schenectady	Schoharie	Warrant
Washington	Columbia	Greene	

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: March 8, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Marks Homecare Agency Inc.  
Address: Rego Park  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 152082

Description of Project:

Marks Homecare Agency 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.

Marks Homecare Agency of NY, Inc. was previously approved by the Public Health and Health Planning Council at its June 7, 2012 meeting and subsequently licensed 1923L001. At that time, it was owned by Mariya Rudinskaya and Shakhnoza Madaminova with each individual owning 100 shares.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Danielle Ganz, OT – 200 Shares  
Occupational Therapist, Special Education Associates, Inc.

The following individual is the sole member of the Board of Directors Marks Homecare Agency Inc.:

Danielle Ganz – President/Chairman  
(Previously Disclosed)

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 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 97-17 64<sup>th</sup> Road, 4<sup>th</sup> Floor, Rego Park, New York 11374:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes 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	Durable Medical Supplies and Equipment	
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: March 3, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Interim Healthcare of Syracuse, Inc.  
Address: Syracuse  
County: Onondaga  
Structure: For-Profit Corporation  
Application Number: 152162

Description of Project:

Interim Healthcare of Syracuse, Inc., a business corporation, requests approval for a change in stock ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Interim Healthcare of Syracuse, Inc. was previously approved as a home care services agency by the Public Health Council at its September 23, 1994 meeting and subsequently licensed as 9669L001. At that time, Interim Healthcare of Syracuse, Inc. had authorized 200 shares of stock which were owned by Neil Bronstein.

The purpose of this application is to seek approval for a stock transfer from Neil Bronstein to Jason Byrnes and Mary Byrnes. Upon approval of this stock transfer, Jason Byrnes will own 150 shares and Mary Byrnes will own 50 shares.

The proposed Board of Directors of Interim Healthcare of Syracuse, Inc. is comprised of the following individuals:

Jason Byrnes – Board Member  
Senior Account Executive,  
Automated Graphic Systems

Mary Byrnes, HHA – Board Member  
Web Designer, North Area Meals on Wheels

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 Home Care Registry revealed that the individual is certified as a Home Health Aide and has no convictions or findings.

Interim Healthcare of Syracuse, Inc. has proposed to continue operating as a Franchise of Interim Healthcare, Inc.

The applicant proposes to serve the residents of the following counties from an office located at 3300 James Street, Suite 201, Syracuse, New York 13206:

Onondaga  
Jefferson  
Oswego

Cayuga  
Madison  
Tompkins

Cortland  
Oneida

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: March 8, 2016



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Interim Healthcare of Binghamton, Inc.  
Address: Binghamton  
County: Broome  
Structure: For-Profit Corporation  
Application Number: 152168

Description of Project:

Interim Healthcare of Binghamton, 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.

Interim Healthcare of Binghamton, Inc. was previously approved as a home care services agency by the Public Health Council at its September 23, 1994 meeting and subsequently licensed as 9668L001. At that time, Interim Healthcare of Binghamton, Inc. had authorized 200 shares of stock which were owned solely by Neil Bronstein.

The purpose of this application is to seek approval for a stock transfer from Neil Bronstein to Jason Byrnes and Mary Byrnes. Upon approval of this stock transfer, Jason Byrnes will own 150 shares and Mary Byrnes will own 50 shares.

The proposed Board of Directors of Interim Healthcare of Binghamton, Inc. is comprised of the following individuals:

Jason Byrnes – Board Member  
Senior Account Executive,  
Automated Graphic Systems

Mary Byrnes, HHA – Board Member  
Web Designer, North Area Meals on Wheels

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 Home Care Registry revealed that the individual is certified as a Home Health Aide and has no convictions or findings.

Interim Healthcare of Binghamton, Inc. has proposed to continue operating as a Franchise of Interim Healthcare, Inc.

The applicant proposes to serve the residents of the following counties from an office located at 38 Front Street, Suite D, Binghamton, New York 13905:

Broome  
Cortland

Chemung  
Tioga

Chenango  
Tompkins

The applicant proposes to provide the following health care services:

Nursing  
Medical Social Services

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: March 8, 2016



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnle , General Counsel  
**Date:** March 18, 2016  
**Subject:** Proposed Certificate of Amendment of the Certificate of Incorporation of New York Hospital Queens Foundation, Inc.

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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of New York Hospital Queens Foundation Inc. This not-for-profit corporation seeks approval to change its name to "The Foundation of New York-Presbyterian Queens." The purpose of the Corporation is to support and benefit, including to solicit funds for its sole member, New York-Presbyterian/Queens. Public Health and Health Planning Council approval for a change of corporate name is therefore required by the Not-For-Profit Law Corporation Law § 804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated October 20, 2015 from Kimlee Rodan-Sanchez, Vice President and Chief Administrative Officer for the corporation which explains the intent and the meaning of the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.

 **New York- Presbyterian**

*Kimlee Roldan-Sanchez  
Vice President and  
Chief Administrative Officer*

*New York- Presbyterian  
Healthcare System and  
Regulatory Planning*

**Mail**  
New York- Presbyterian/ Weill Cornell  
525 East 68th Street  
Box 208  
New York, NY 10021

**Office**  
Helmsley Medical Tower, 7<sup>th</sup> Floor  
1320 York Avenue  
New York, New York 10021

TEL 212 746-7905  
FAX 212 746-7902

kir9001@nyp.org

October 20, 2015

**VIA FEDERAL EXPRESS**

Colleen M. Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower, Rm 1805  
Albany, New York 12237

**Re: Consent to File Change of Name  
The Foundation of New York- Presbyterian/Queens**

Dear Ms. Leonard:

On behalf of New York Hospital Queens Foundation, Inc. (the "Foundation"), I respectfully submit this request for a letter of consent from the Public Health and Health Planning Council to permit the filing with the Secretary of State of the enclosed Certificate of Amendment to the Certificate of Incorporation for the Foundation to have its name changed to "The Foundation of New York- Presbyterian/Queens". The purpose of the Foundation is to support and benefit, including to solicit funds for, its sole member, New York- Presbyterian/Queens. We request this change in the Foundation name to be consistent with the name of the hospital. See attached NYSDOH operating certificate for reference.

Enclosed for your review is an executed copy of the proposed Certificate of Amendment of the Certificate of Incorporation of the Foundation.

If you have any questions, please call me at 212-746-7905.

Sincerely,

  
Kimlee Roldan-Sanchez

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

The undersigned, Stephen S. Mills, certifies that he is the President of New York Hospital Queens Foundation, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is New York Hospital Queens Foundation, Inc. The name under which the Corporation was formed was BMA MEDICAL FOUNDATION, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. Paragraph FIRST of the Certificate of Incorporation is hereby amended to effect a change in the name of the Corporation so that Paragraph FIRST reads in its entirety as follows:

"FIRST: The name of the Corporation is The Foundation of NewYork-Presbyterian/Queens."
5. This Amendment to the Certificate of Incorporation was authorized by the sole member of the Corporation entitled to vote thereon at a meeting duly held on September 3, 2015 in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

The Foundation of New York-Presbyterian/Queens  
c/o New York-Presbyterian/Queens  
56-45 Main Street  
Flushing, New York 11355  
Attention: President

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 7 day of October, 2015.

By:   
Name: Stephen S. Mills  
Title: President



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter, General Counsel

**Date:** March 18, 2016

**Subject:** Proposed Certificate of Amendment of the Certificate of Incorporation of The Foundation of Hudson Valley Hospital Center, Inc.

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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of The Foundation of Hudson Valley Hospital Center, Inc. This not-for-profit corporation seeks approval to change its name to "The Foundation of New York-Presbyterian/Hudson Valley Hospital." The purpose of the Corporation is to support and benefit, including to solicit funds for its sole member, Hudson Valley Hospital Center. Public Health and Health Planning Council approval for a change of corporate name is therefore required by the Not-For-Profit Law Corporation Law § 804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated October 20, 2015 from Kimlee Rodan-Sanchez, Vice President and Chief Administrative Officer for the corporation which explains the intent and the meaning of the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.



Kimlee Roldan-Sanchez  
Vice President and  
Chief Administrative Officer

New York-Presbyterian  
Healthcare System and  
Regulatory Planning

Mail  
New York-Presbyterian/Weill Cornell  
525 East 68th Street  
Box 208  
New York, NY 10021

Office  
Helmsley Medical Tower, 7<sup>th</sup> Floor  
1320 York Avenue  
New York, New York 10021

TEL 212 746-7905  
FAX 212 746-7902

kir9001@nyp.org

October 20, 2015

**VIA FEDERAL EXPRESS**

Colleen M. Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower, Rm 1805  
Albany, New York 12237

**Re: Consent to File Change of Name  
The Foundation of New York-Presbyterian/Hudson Valley Hospital**

Dear Ms. Leonard:

On behalf of The Foundation of Hudson Valley Hospital Center, Inc. (the "Foundation"), I respectfully submit this request for a letter of consent from the Public Health and Health Planning Council to permit the filing with the Secretary of State of the enclosed Certificate of Amendment to the Certificate of Incorporation of the Foundation to have its name changed to "The Foundation of New York-Presbyterian/Hudson Valley Hospital". The purpose of the Foundation is to support and benefit, including to solicit funds for, its sole member, Hudson Valley Hospital Center, doing business as New York-Presbyterian/Hudson Valley Hospital ("NYP/Hudson Valley Hospital"). We request this change in name for the Foundation to be consistent with the name of the hospital. See attached NYSDOH operating certificate for reference.

Enclosed for your review is an executed copy of the proposed Certificate of Amendment to the Certificate of Incorporation of the Foundation.

If you have any questions, please call me at 212-746-7905.

Sincerely,



Kimlee Roldan-Sanchez

**CERTIFICATE OF AMENDMENT**  
**OF THE**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE FOUNDATION OF HUDSON VALLEY HOSPITAL CENTER, INC.**

Under Section 803 of the  
New York Not-for-Profit Corporation Law

The undersigned, John Federspiel, certifies that he is the President of The Foundation of Hudson Valley Hospital Center, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

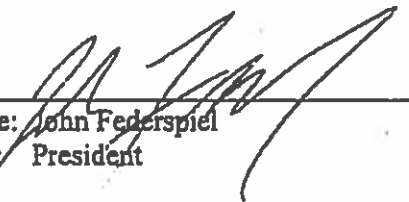
1. The name of the Corporation is The Foundation of Hudson Valley Hospital Center, Inc. The name under which the Corporation was formed was the Peekskill Community Hospital Foundation, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on June 5, 1987 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. Paragraph FIRST of the Certificate of Incorporation is hereby amended to effect a change in the name of the Corporation so that Paragraph FIRST reads in its entirety as follows:

"FIRST: The name of the Corporation is The Foundation of NewYork-Presbyterian/Hudson Valley Hospital."
5. This Amendment to the Certificate of Incorporation was authorized by the sole member of the Corporation entitled to vote thereon in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:



The Foundation of NewYork-Presbyterian/Hudson Valley Hospital  
c/o NewYork-Presbyterian/Hudson Valley Hospital  
1980 Crompond Road  
Cortlandt Manor, New York 10567  
Attention: President

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 19 day of October, 2015.

By:   
Name: John Federspiel  
Title: President



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter, General Counsel

**Date:** March 18, 2016

**Subject:** Proposed Certificate of Amendment of the Certificate of Incorporation of North Shore-Long Island Jewish Health System Laboratories

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North Shore-Long Island Health System Laboratories. This not-for-profit corporation seeks approval to change its name to "Northwell Health Laboratories." Public Health and Health Planning Council approval for a change of corporate name is therefore required by the Not-For-Profit Law Corporation Law § 804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated March 1, 2016 from Lauren E. Campisi, Esq., Assistant Vice President in the Office of Legal Affairs for Northwell Health which explains the intent and the meaning of the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.



North Shore-LIJ Health System is now Northwell Health

Office of Legal Affairs

Lauren E. Campisi, Esq.  
Assistant Vice President

March 1, 2016

Public Health and Health Planning Council ("Council")  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

**Re: Proposed Certificates of Amendment of the Certificate of Incorporation to change the name of North Shore-Long Island Jewish Health System Laboratories to Northwell Health Laboratories**

Dear Council:

We respectfully submit this letter in support of our application to change the name of North Shore-Long Island Jewish Health System Laboratories ("Laboratories") to Northwell Health Laboratories, and we wish to explain the reasoning for the proposed change.

Effective January 1, 2016, North Shore-Long Island Jewish Health System, Inc., which is the sole member of Laboratories, changed its name to Northwell Health, Inc. The reason for the name change to Northwell was that we are a different organization today than we were in 1997, when North Shore Health System merged with Long Island Jewish Medical Center to form North Shore-LIJ Health System. At that time, we took the names of the two institutions and joined them together. Our organization has grown in many ways since that time. We now have 21 hospitals, a vast network of long-term care, rehabilitation, home care, hospice and a range of other services, about 450 outpatient physician practices, medical and nursing schools, and an internationally recognized research institute. As we approach our third decade, the depth and breadth of services that we provide is far different today, especially as we place a greater focus on promoting health and wellness. Our geographic service area has also grown significantly beyond Long Island over the past 18 years, as we have established a presence in Manhattan, Brooklyn, Westchester County, and even Boca Raton, FL.

The name Northwell Health was chosen because it recognizes our heritage with "north" and also represents our desire to guide consumers on their health care journey. The word "well" in Northwell signifies our commitment to promoting wellness and healthier lifestyles among the

communities we serve. "Health" reflects the quality healthcare for which we are known and which we want to continue to promote.

We submit this name change application for Laboratories to ensure the continued alignment of its name with the parent company's name, to avoid confusion, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general. I can be reached at (516) 465-8389 or via email at [lcampisi@northwell.edu](mailto:lcampisi@northwell.edu)

Sincerely,



Lauren E. Campisi

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM  
LABORATORIES**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President of North Shore-Long Island Jewish Health System Laboratories, does hereby certify:

1. The name of the corporation is North Shore-Long Island Jewish Health System Laboratories (the "Corporation"). The Corporation was formed under the name North Shore Health System Laboratories.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on December 1, 1997 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the name of the Corporation to Northwell Health Laboratories.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, Paragraph FIRST of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

**FIRST.** The name of the corporation is Northwell Health Laboratories (the "Corporation").

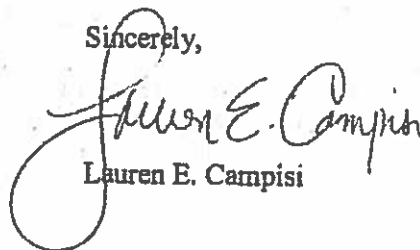
6. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation.

communities we serve. "Health" reflects the quality healthcare for which we are known and which we want to continue to promote.

We submit this name change application for Laboratories to ensure the continued alignment of its name with the parent company's name, to avoid confusion, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general. I can be reached at (516) 465-8389 or via email at [lcampisi@northwell.edu](mailto:lcampisi@northwell.edu)

Sincerely,

A handwritten signature in black ink that reads "Lauren E. Campisi". The signature is fluid and cursive, with a large loop at the end of the name.

Lauren E. Campisi

7. To effectuate the amendment described in Paragraph 6 of this Certificate of Amendment, paragraph TENTH of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

**TENTH.** The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: c/o Northwell Health, Inc., 2000 Marcus Avenue, New Hyde Park, New York 11042, Attention: Office of Legal Affairs.

8. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
9. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: c/o Northwell Health, Inc., 2000 Marcus Avenue, New Hyde Park, New York 11042, Attention: Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 29<sup>th</sup> day of February, 2016, and hereby affirm, under penalties of perjury, that the statements herein are true.

  
\_\_\_\_\_  
Michael J. Dowling  
President

---

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF**

**NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM LABORATORIES  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

---

**FILED BY:**

**NORTHWELL HEALTH, INC.  
145 COMMUNITY DRIVE  
GREAT NECK, NEW YORK 11021**



of any state official, department, board, agency or other body without such consent or approval first being obtained.

**FOURTH.** In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to maintain a fund or funds of real or personal property for any corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

**FIFTH.** The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable purposes, as specified in Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code.

**SIXTH.** Except as specifically provided for in Article Third above, nothing contained herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(b) through (v) of the Not-for-Profit Corporation Law.

**SEVENTH.** No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code, or the corresponding provision of any future United States internal revenue law, during any fiscal year or years in which the Corporation has chosen to utilize the benefits authorized by that statutory provision) and the Corporation shall not participate in or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

**EIGHTH.** The office of the Corporation shall be located in Nassau County, State of New York.

**NINTH.** The names and addresses of the initial directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Daniel C. de Roulet	c/o North Shore Health System 150 Community Drive Great Neck, New York 11021

Alan I. Greene c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

Saul B. Katz c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

Robert Kaufman c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

Abraham Krasnoff c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

Ralph A. Nappi c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

Alan W. Warshow c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

John S.T. Gallagher c/o North Shore Health System  
150 Community Drive  
Great Neck, New York 11021

**TENTH.** The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

North Shore Health System Laboratories  
150 Community Drive  
Great Neck, New York 11021  
Attention: Vice President, Legal Affairs

**ELEVENTH.** In the event of dissolution, the assets and property of the Corporation remaining after payment of expenses and satisfaction of all liabilities shall be distributed as determined by the Board of Directors and as approved by a court of competent jurisdiction for the not-for-profit purposes of the Corporation and/or to such charitable and educational organizations as shall qualify under Section 501(c)(3) of the Code. Any of such assets not so distributed shall be disposed of for such purposes as approved by a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation.

**IN WITNESS WHEREOF,** this certificate has been executed the 24th day of September, 1997 and I affirm the statements contained herein are true under the penalty of perjury.



\_\_\_\_\_  
Harry E. Gindi  
150 Community Drive  
Great Neck, NY 11021



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

# PUBLIC HEALTH COUNCIL

November 25, 1997

Ms. Adele N. Herman  
North Shore Health Systems  
150 Community Drive  
Great Neck, New York 11021

Re: Certificate of Incorporation of North Shore Health System Laboratories

Dear Ms. Herman:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 21st day of November, 1997, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of North Shore Health System Laboratories, dated September 24, 1997.

Sincerely,

Karen S. Westervelt  
Executive Secretary

5

CT-07

971201000 819

CT-07

CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE HEALTH SYSTEM LABORATORIES  
UNDER SECTION 402 OF THE NOT FOR PROFIT CORPORATION LAW

*Handwritten scribbles*

*dec*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 01 1997  
TAX \$ \_\_\_\_\_  
BY: *Dec*

DEC 1 2 1997

RECEIVED

*NASS*

NORTH SHORE UNIVERSITY HOSPITAL  
150 COMMUNITY DRIVE  
GREAT NECK, NY 11021

*6*

971201000 850

Y. S. DEPARTMENT OF STATE  
VISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0000

FILING RECEIPT

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1 COMPANY NAME : NORTH SHORE HEALTH SYSTEM LABORATORIES

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: NASS  
SERVICE COMPANY : CT CORPORATION SYSTEM SERVICE CODE: 07

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FILED: 12/01/1997 DURATION: PERPETUAL CASH #: 971201000850 FILM #: 971201000E1

ADDRESS FOR PROCESS

THE CORPORATION  
ATTN VICE PRES LEGAL AFFAIRS  
GREAT NECK, NY 11021

REGISTERED AGENT



EXIST DA1  
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12/01/199

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FILER	FEE		PAYMENTS	
NORTH SHORE UNIVERSITY HOSPITAL		120.00		120.0
150 COMMUNITY DRIVE	FILING :	75.00	CASH :	0.0
GREAT NECK, NY 11021	TAX :	0.00	CHECK :	120.0
	CERT :	0.00	BILLED:	0.0
	COPIES :	20.00		
	HANDLING:	25.00		
			REFUND:	0.0

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-1025 (11/89)

F 981203000611

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE HEALTH SYSTEM LABORATORIES  
Under Section 803 of the Not-for-Profit Corporation Law**

The undersigned Patrick E. Brown, Esq., attorney-in-fact for NORTH SHORE HEALTH SYSTEM LABORATORIES (the "Corporation") hereby certifies that:

- A. The name of the Corporation is NORTH SHORE HEALTH SYSTEM LABORATORIES.
- B. The Certificate of Incorporation of the Corporation was filed by the Department of State on December 1, 1997 pursuant to Section 402 of the Not-for Profit Corporation Law
- C. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 (Purposes) of the Not-for-Profit Corporation Law. After the filing of this Certificate of Amendment, the Corporation shall remain a Type B corporation under Section 201 (Purposes) of the Not-for-Profit Corporation Law.
- D. The Corporation hereby amends Paragraph First of the Certificate of Incorporation which relates to the name of the Corporation and changes the name of the Corporation from North Shore Health System Laboratories to North Shore-Long Island Jewish Health System Laboratories Paragraph First of the Certificate of Incorporation shall read in its entirety as follows:

/

The name of the Corporation is North Shore-Long Island Jewish Health System Laboratories.

E. The Corporation hereby amends Paragraph Third of the Certificate of Incorporation which relates to the purposes of the Corporation and adds Long Island Jewish Medical Center as one of the hospitals for which the Corporation provides laboratory services. Paragraph Third of the Certificate of Incorporation shall read in its entirety as follows

The purposes of the Corporation, which are exclusively charitable within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time (the "Code"), are as follows: (a) to provide diagnostic and clinical laboratory services for: North Shore University Hospital, Long Island Jewish Medical Center, North Shore University Hospital at Glen Cove, North Shore University Hospital at Plainview, North Shore University Hospital at Forest Hills, Huntington Hospital, Franklin Hospital Medical Center, Staten Island University Hospital, and Southside Hospital, each of which is a not-for-profit corporation organized and existing under the laws of the State of New York and an exempt organization under Section 501(c)(3) of the Code and described in Section 509(a)(1) or (a)(2) of the Code, and for such other not-for-profit corporations which are exempt organizations under Section 501(c)(3) of the Code and described in Section 509(a)(1), (a)(2) or (a)(3) of the Code, of which this Corporation, North Shore Health System or any of the aforementioned corporations, is or hereafter becomes the sole voting member, and (b) to conduct any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment, or attainment of the foregoing purposes. The objects and purposes provided for herein shall be subject to any approvals or consents of such regulatory bodies as may be required by law. The Corporation is not formed to engage in any act or



activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

F. The Corporation hereby amends Paragraph Tenth of the Certificate of Incorporation which relates to the service of process address and changes the name of the entity at the post office address to which the Secretary of State shall mail a copy of any process against the Corporation from North Shore Health System Laboratories to North Shore-Long Island Jewish Health System Laboratories. Paragraph Tenth of the Certificate of Incorporation shall read in its entirety as follows:

The Corporation hereby designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any such process against the Corporation served upon him is:

North Shore-Long Island Jewish Health System Laboratories  
150 Community Drive  
Great Neck, New York 11021  
Attention: Vice President, Legal Affairs

G. This Amendment of the Corporation's Certificate of Incorporation was authorized by a vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law of the State of New York.

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury this <sup>5<sup>th</sup></sup> day of October, 1998



Patrick E. Brown, Esq.  
Attorney-in-fact for North Shore Health  
System Laboratories



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

# PUBLIC HEALTH COUNCIL

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November 5, 1998

Patrick E. Brown, Esq.  
Plunkett & Jaffe, P.C.  
Attorneys at Law  
111 Washington Avenue  
Albany, New York 12210

Re: Certificate of Amendment of the Certificate of Incorporation of North Shore Health System Laboratories

Dear Mr. Brown:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30th day of October, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of North Shore Health System Laboratories, dated October 5, 1998.

Sincerely,

*Donna Peterson for*

Karen S. Westervelt  
Executive Secretary

4

STATE OF NEW YORK  
DEPARTMENT OF STATE  
INCORPORATION  
OF  
NORTH SHORE HEALTH SYSTEM LABORATORIES

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 23 1998  
TAXES BY STJ  
NASSAU

*BC*

Dec 3 2 50 PM '98

ELIOT T. SPENCER, JR.  
100 WEST 42ND AVENUE  
ALBANY, NY 12240  
(518) 462-1000

981203000646

*J*

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM LABORATORIES

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)

COUNTY: NASS

PURPOSES PROCESS NAME PROVISIONS

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FILED:12/03/1998 DURATION:\*\*\*\*\* CASH#:981203000646 FILM #:981203000611

ADDRESS FOR PROCESS

THE CORPORATION

ATTN: VICE PRES. LEGAL AFFAIRS  
GREAT NECK, NY 11021

150 COMMUNITY DRIVE

REGISTERED AGENT



FILER	FEE	65.00	PAYMENTS	65.00
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PLUNKETT & JAFFE, P.C.	FILING :	30.00	CASH :	0.00
111 WASHINGTON AVENUE	TAX :	0.00	CHECK :	65.00
	CERT :	0.00	BILLED:	0.00
ALBANY, NY 12210	COPIES :	10.00		
	HANDLING:	25.00		
			REFUND:	0.00
			-----	-----

*State of New York* }  
*Department of State* }<sup>11:</sup>

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on* DEC 04 1998



A handwritten signature in cursive script, appearing to read "J. Clark", written in black ink.

*Special Deputy Secretary of State*



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnleuter, General Counsel  
**Date:** March 7, 2015  
**Subject:** Proposed Dissolution of McCauley Living Services, Inc.

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McCauley Living Services Inc., ("McCauley") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and §1003, as well as 10 NYCRR Part 650.

The Certificate of Incorporation was filed with the New York State Department of State on July 30, 1976 under the name Mercy Craft Guild, Inc. It has since amended its name to McCauley Family Services, Inc. McCauley ceased its operations effective April 3, 2015 and surrendered its operating certificate to the Department of Health. McCauley has not carried on any business or activities since that time, has no assets or liabilities and has no reason to continue its existence.

Attached are a copy of the a letter from McCauley's attorney explaining the need for the proposed dissolution, the proposed Certificate of Dissolution, the proposed Plan of Dissolution, a resolution of the Board of Directors of Sisters of Mercy of the Americas Northeast Community, Inc. consenting to the dissolution, a summary of McCauley's Distribution of Assets and Liabilities and a proposed Verified Petition seeking the Attorney General's approval to file McCauley's Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments.



Iseman Cunningham  
Riester & Hyde LLP  
Attorneys and  
Counselors at Law

9 Thurlow Terrace  
Albany, New York 12203  
T 518.462.3000 F 518.462.4199  
Offices also in Poughkeepsie and Millbrook

[www.icrh.com](http://www.icrh.com)

December 17, 2015

Colleen M. Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Corning Tower, Room 1805  
Albany, NY 12237

**RE: McAuley Living Services, Inc. – Certificate of Dissolution**

Dear Ms. Leonard:

We are attorneys for McAuley Living Services, Inc., to request approval of the enclosed original executed Certificate of Dissolution of the corporation. McAuley Living Services, Inc., formerly operated an adult home and assisted living program located on S. Manning Boulevard in the City of Albany, New York. The corporation surrendered its licenses (adult home, assisted living and home care services agency) earlier this year.

Please contact the undersigned if any additional information is required to obtain approval of the Certificate of Dissolution.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

  
Carol A. Hyde  
[ch Hyde@icrh.com](mailto:ch Hyde@icrh.com)

enc.

cc: Jean M. McGinty, RSM

**CERTIFICATE OF DISSOLUTION**

**OF**

**McAULEY LIVING SERVICES, INC.**

*Under Section 1003 of the New York Not-for-Profit Corporation Law*

Filed by: Carol A. Hyde, Esq.  
Iseman Cunningham Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
(518) 462-3000  
(Drawdown: J8)



**CERTIFICATE OF DISSOLUTION**

**OF**

**McAULEY LIVING SERVICES, INC.**

*Under Section 1003 of the New York Not-for-Profit Corporation Law*

- FIRST:** The name of the corporation is McAuley Living Services, Inc. (the "Corporation"). The name under which the corporation was formed was Mercy Craft Guild, Inc.
- SECOND:** The certificate of incorporation of the Corporation was filed with the New York State Department of State on July 30, 1976.
- THIRD:** The sole member of the Corporation is Sisters of Mercy of the Americas Northeast Community, Inc. (the "Member").
- FOURTH:** The names and addresses of each of the directors and officers of the Corporation and the title of each are as follows:

<b>Name</b>	<b>Officer or Director / Title</b>	<b>Address</b>
Jean M. McGinty, RSM	Director/President	360 Whitehall Road Albany, NY 12208
Jane Somerville, RSM	Director/ Vice President	8 B Tierney Drive Delmar, NY 12054
Marilyn Murray, RSM	Director/ Secretary/Treasurer	890 Clarksville South Rd. Feura Bush, NY 12067

- FIFTH:** Dissolution of the Corporation was authorized by unanimous vote of the Board of Directors of the Corporation. Dissolution was then approved by the Member of the Corporation at a regularly scheduled meeting by at least two-thirds vote with a quorum present.
- SIXTH:** The Corporation elects to dissolve.
- SEVENTH:** At the time of dissolution, the Corporation is a charitable not-for-profit corporation.
- EIGHTH:** Prior to the delivery of this Certificate to the New York Department of State for filing, the Corporation will file with the Attorney General a verified petition for

Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

NINTH: When the Board authorized, and the Member approved, the Plan of Dissolution, the Corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.

TENTH: Prior to the filing of this Certificate with the New York State Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of McAuley Living Services, Inc., this 3 day of December, 2015

By: Jean M. McGinty, RSM.  
Jean M. McGinty, RSM  
President

## PLAN OF DISSOLUTION

OF

### McAULEY LIVING SERVICES, INC.

*Under Section 1001 of the New York Not-for-Profit Corporation Law*

The following **PLAN OF DISSOLUTION** (the "Plan") has been adopted by the Board of Directors of McAuley Living Services, Inc., a New York not-for-profit corporation (the "Corporation"):

1. Meeting; Notice; Recommendation. The Board of Directors of the Corporation by unanimous written consent in lieu of a meeting, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, this Plan for a voluntary dissolution of the Corporation, does hereby resolve and recommend to Sisters of Mercy of the Americas Northeast Community, Inc., the sole member of the Corporation ("Member"), that the Corporation be dissolved in accordance with the Plan.
2. Approval of Plan. The Board shall submit this Plan to the Member for approval. This Plan shall become effective upon approval by the Member, in compliance with Section 1002(a) of the New York Not-for-Profit Law.
3. Consent. Approval of this Plan and dissolution of the Corporation is required to be obtained from the New York State Department of Health. The Corporation shall apply for such approval.
4. Assets; Liabilities. The Corporation has no assets or liabilities.
5. Dissolution. A Certificate of Dissolution shall be signed by any Director or Officer of the Corporation and all required approvals shall be attached thereto, in compliance with the provisions of the New York Not-for-Profit Corporation Law.

**McAULEY LIVING SERVICES, INC.**  
**Board of Directors Resolution**

The undersigned, being all of the members of the Board of Directors of McAuley Living Services, Inc., a New York not-for-profit corporation (the "Corporation"), hereby adopt the following **PLAN OF DISSOLUTION** (the "Plan") by unanimous written consent in lieu of a meeting:

1. Meeting; Notice; Recommendation. The Board of Directors of the Corporation by unanimous written consent in lieu of a meeting, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, this Plan for a voluntary dissolution of the Corporation, does hereby resolve and recommend to Sisters of Mercy of the Americas Northeast Community, Inc., the sole member of the Corporation ("Member"), that the Corporation be dissolved in accordance with the Plan.
2. Approval of Plan. The Board shall submit this Plan to the Member for approval. This Plan shall become effective upon approval by the Member, in compliance with Section 1002(a) of the New York Not-for-Profit Law.
3. Consent. Approval of this Plan and dissolution of the Corporation is required to be obtained from the New York State Department of Health. The Corporation shall apply for such approval.
4. Assets; Liabilities. The Corporation has no assets or liabilities.
5. Dissolution. A Certificate of Dissolution shall be signed by any Director or Officer of the Corporation and all required approvals shall be attached thereto, in compliance with the provisions of the New York Not-for-Profit Corporation Law.

Marilyn K. Murray, RSM 12/2/15  
Marilyn Murray, RSM                      Date

Jane Somerville, RSM 12/2/15  
Jane Somerville, RSM                      Date

Jean M. McGinty, RSM 12/2/15  
Jean M. McGinty, RSM                      Date

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF  
SISTERS OF MERCY OF THE AMERICAS NORTHEAST COMMUNITY, INC.**

The undersigned, being the Secretary of Sisters of Mercy of the Americas Northeast Community, Inc. (the "Member"), which is the sole member of McAuley Living Services, Inc. (the "Corporation"), does hereby certify that the following resolutions were approved by at least two-thirds vote with a quorum present, on 12/2/15, at a regularly scheduled meeting of the Board of Directors of the Member:

**WHEREAS**, the present condition of the Corporation has been duly examined by the Board of Directors of the Corporation, and after due examination, a plan for the dissolution of Corporation (the "Plan"), has been approved by the Board of Directors of the Corporation, a copy of which Plan is attached hereto;

**WHEREAS**, the Board of Directors of the Corporation recommends dissolution of the Corporation to the Member and submits the Plan to the Member for review and approval;

**NOW THEREFORE, IT IS**

**RESOLVED**, that the Board of Directors of the Member, after due consideration of the Plan, hereby approves (i) the Plan and (ii) the dissolution of the Corporation; and be it further

**RESOLVED**, that the dissolution of the Corporation be effected in accordance with the Plan; and be it further

**RESOLVED**, that the officers of the Corporation and each of them (each an "Authorized Officer"), are hereby authorized to execute, enter into, acknowledge and deliver such agreements, documents, instruments, certificates and statements as may be necessary or appropriate to effectuate the dissolution of the Corporation and these Resolutions and which may contain such other terms and conditions as are not inconsistent herewith that the Authorized Officer thinks reasonable and advisable, and to consummate the transactions contemplated hereunder, and to do and perform such other and further acts and things, and to take such other steps, as may be necessary, advisable, convenient, and proper to carry out fully the intent and purpose of these Resolutions; and be it further

**RESOLVED**, that, to the extent necessary to implement these Resolutions and the transactions contemplated hereunder, governmental approvals are required under applicable law, the Corporation and the Authorized Officers, respectively, are authorized and directed to use reasonably commercial efforts to obtain such approvals; and be it further

**RESOLVED**, that the actions of the Officers and Directors of the Corporation heretofore taken in the negotiation and execution of documents for the dissolution contemplated hereunder and all previous resolutions are hereby approved and ratified as of the date of these Resolutions; and be it further

**RESOLVED**, that this Resolution is effective immediately.

  
Patricia Flynn, RSM, Secretary

Dated: 12/2/15

## PLAN OF DISSOLUTION

OF

### McAULEY LIVING SERVICES, INC.

*Under Section 1001 of the New York Not-for-Profit Corporation Law*

The following **PLAN OF DISSOLUTION** (the "Plan") has been adopted by the Board of Directors of McAuley Living Services, Inc., a New York not-for-profit corporation (the "Corporation"):

1. Meeting; Notice; Recommendation. The Board of Directors of the Corporation by unanimous written consent in lieu of a meeting, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, this Plan for a voluntary dissolution of the Corporation, does hereby resolve and recommend to Sisters of Mercy of the Americas Northeast Community, Inc., the sole member of the Corporation ("Member"), that the Corporation be dissolved in accordance with the Plan.
2. Approval of Plan. The Board shall submit this Plan to the Member for approval. This Plan shall become effective upon approval by the Member, in compliance with Section 1002(a) of the New York Not-for-Profit Law.
3. Consent. Approval of this Plan and dissolution of the Corporation is required to be obtained from the New York State Department of Health. The Corporation shall apply for such approval.
4. Assets; Liabilities. The Corporation has no assets or liabilities.
5. Dissolution. A Certificate of Dissolution shall be signed by any Director or Officer of the Corporation and all required approvals shall be attached thereto, in compliance with the provisions of the New York Not-for-Profit Corporation Law.



McAuley Living Services  
 Statistical Report  
 June 2015

Days

30

181

	Month of June				Year To Date			
	Actual	Budget	Variance	Prior Yr	Actual	Budget	Variance	Prior Yr
<b><u>RESIDENT DAYS</u></b>								
PRIVATE PAY	-	-	-	274	140	-	140	1,261
MEDICAID / SSI	-	-	-	953	780	-	780	5,946
SSI BED HOLD DAYS	-	-	-	18	10	-	10	396
	-	-	-	1,245	930	-	930	7,603
<b><u>AVERAGE DAILY CENSUS</u></b>								
PRIVATE PAY	-	-	-	9.1	0.8	-	0.8	7.0
MEDICAID / SSI	-	-	-	31.8	4.3	-	4.3	32.9
SSI BED HOLD	-	-	-	0.6	0.1	-	0.1	2.2
	-	-	-	41.5	5.1	-	5.1	42.0
<b><u>OCCUPANCY %</u></b>								
	0.0%	-	0.0%	86.5%	10.7%	-	10.7%	87.5%
<b><u>ADMISSIONS</u></b>								
PRIVATE PAY	-	-	-	2	-	-	-	6
MEDICAID	-	-	-	-	-	-	-	6
	-	-	-	2	-	-	-	12
<b><u>DISCHARGES</u></b>								
PRIVATE PAY	-	-	-	1	5	-	5	1
MEDICAID	-	-	-	1	17	-	17	13
	-	-	-	2	22	-	22	14
<b><u>MEDICAID CONVERSIONS</u></b>								
	-	-	-	-	-	-	-	-

-----X  
In the Matter of the Application of:  
McAuley Living Services, Inc.

VERIFIED PETITION

For Approval of Certificate of Dissolution pursuant to  
Section 1002 of the Not-for-Profit Corporation Law.

-----X  
TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
Office of the Attorney General, Charities Bureau  
The Capitol  
Albany, NY 12224-0341

Petitioner, McAuley Living Services, Inc., by Jean M. McGinty, RSM, President of the corporation for its Verified Petition alleges:

1. McAuley Living Services, Inc. (the "Corporation"), whose principal address is located in the County of Albany, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 30, 1976. A copy of the Corporation's Certificate of Incorporation and all amendments are attached hereto as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and/or directors are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Jean M. McGinty, RSM	Director/President	360 Whitehall Road Albany, NY 12208
Jane Somerville, RSM	Director/ Vice President	8 B Tierney Drive Delmar, NY 12054
Marilyn Murray, RSM	Director/ Secretary/Treasurer	890 Clarksville South Rd. Feura Bush, NY 12067

3. The purposes for which the Corporation was organized are as set forth in Paragraph 3 of its Certificate of Incorporation as amended, attached hereto as Exhibit A.

4. The Corporation is a charitable corporation.

5. The Board of Directors, by unanimous written consent executed in lieu of a meeting, adopted approved a Plan of Dissolution and authorized the execution of a Certificate of Dissolution, subject to receipt of the approval of Sisters of Mercy of the Americas, Northeast Community, Inc., the sole member of the Corporation. A copy of such Board of Directors resolution consenting to the Plan of Dissolution is attached hereto as Exhibit B.

6. Sisters of Mercy of the Americas, Northeast Community, Inc., the sole member of the



Corporation, approved the dissolution of the Corporation at a meeting of its Board of Directors held on December 2, 2015, by at least a two-thirds vote with a quorum present. A copy of the resolution, certified by the Secretary of the Board of Directors of the member is attached hereto as Exhibit C.

7. A certified copy of the Corporation's Plan of Dissolution is attached hereto as Exhibit D.

8. The Corporation has no assets or liabilities, and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of the Corporation must be obtained from the following governmental body, and a copy of the approval is attached as Exhibit E:

New York State Department of Health

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

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this \_\_\_ day of March, 2016.

  
Jean M. McGinty, RSM  
President

**Verification**

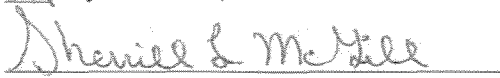
STATE OF NEW YORK    )  
  )SS.:  
COUNTY OF ALBANY    )

Jean M. McGinty, RSM, being duly sworn, deposes and says:

I am the President of McAuley Living Services, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

  
(Signature)

Sworn to before me this  
3<sup>rd</sup> day of March, 2016.

  
Notary Public

SHERRILL L. MCGILL  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MC6182201  
Qualified in Saratoga County  
My Commission Expires February 19, 2020

090324000 884

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
McAULEY LIVING SERVICES, INC.

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

RECEIVED  
2009 MAR 24 PM 1:54

PH 4:27

Filed by:

Rachel Ryan, Esq.  
Isern, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, NY 12203

Drawdown #J8

*mk*

*Zoe's*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 24 2009

TAX \$ \_\_\_\_\_  
BY: *mk*

*Albany*

*8*

*969*

JUDICIAL CONSENT

I, HON. JOSEPH C. TERESI, J.S.C., a Justice of the Supreme Court of the State of New York for the Third Judicial District, do hereby approve the within Certificate of Amendment of the Certificate of Incorporation for McAuley Living Services, Inc. pursuant to Section 804(a)(ii) of the Not-for-Profit Corporation Law and consent that the same be filed.

Dated: 3/24/09

*Albany*

*Joseph C. Teresi*  
Justice of the Supreme Court  
Third Judicial District

THE ATTORNEY GENERAL HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL APPROVAL  
HEREON, ACKNOWLEDGES RECEIPT OF  
STATUTORY NOTICE AND DEMANDS SERVICE  
OF THE FILED CERTIFICATE. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE  
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

*Patrick Murphy* 3/20/09  
ASSISTANT ATTORNEY GENERAL      DATE

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and the official seal of the Department of State, at the City of Albany, on March 25, 2009.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
McAULEY LIVING SERVICES, INC.**

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

We, the undersigned, being the President and Secretary of McAuley Living Services, Inc., do hereby certify:

1. The name of the corporation is McAuley Living Services, Inc. The name under which the corporation was formed was Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of McAuley Living Services, Inc. was filed by the New York Department of State on July 30, 1976.
3. McAuley Living Services, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, and is a Type B corporation under Section 201 of said law. The corporation shall hereafter continue to be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.
4. Paragraph "3" of the Certificate of Incorporation of McAuley Living Services, Inc., which sets forth the purposes of the corporation, is hereby amended to read as follows:
  - "3. The purposes for which the corporation is formed are:
    - (a) To operate exclusively for religious or charitable purposes; to promote the alleviation of human suffering by benevolent work; and to perform corporal and spiritual works of mercy in accordance with the mission and philosophy of the Sisters of Mercy of the Americas Northeast Community, Inc.; and
    - (b) To establish and operate an Adult Home as defined in Section 2(25) of the New York Social Services Law.

- (c) To establish and operate an assisted living program as defined in Section 461-l of the New York Social Services Law.
- (d) To own and operate a Home Care Services Agency under Article 36 of the New York Public Health Law; and
- (e) To do any lawful act or thing incidental to or connected with any of the foregoing purposes or in advancement thereof, provided that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained."

5. Paragraph "6" of the Certificate of Incorporation, which sets forth the identity of the sole member of the corporation, is hereby amended to read as follows:

- "6. The Sisters of Mercy of the Americas Northeast Community, Inc. is the sole member of the corporation. As such, the Sisters of Mercy of the Americas Northeast Community, Inc. shall be entitled to all rights and powers of a member under the laws of the State of New York, this Certificate of Incorporation and the Bylaws of the corporation."

6. Paragraph "7" of the Certificate of Incorporation, which sets for the reserved powers of the corporation and the manner in which said reserved powers are exercised, is hereby amended to read as follows:

- "7. In addition to any other requirements under New York law, this Certificate of Incorporation or the Bylaws of the corporation, the following powers shall be expressly reserved to Sisters of Mercy of the Americas Northeast Community, Inc. as the sole member of the corporation. Action by the corporation shall not be taken until the Sisters of Mercy of the Americas Northeast Community, Inc. has exercised its reserved powers. The Sisters of Mercy of the Americas Northeast Community, Inc. shall exercise powers reserved to it in the manner required by its governance documents. The following powers shall be reserved to and exercised by the Sisters of Mercy of the Americas Northeast Community, Inc.:

- (a) Adopt, amend or restate the Certificate of Incorporation of the corporation;
- (b) Adopt, amend or restate the Bylaws of the corporation;

- (c) Establish or dissolve organizational relationships by the corporation, including without limitation, subsidiary corporations, partnerships, joint ventures, mergers, consolidations, reorganizations and dissolutions;
- (d) Appoint, fix the number of and remove, with or without cause, the Directors of the corporation;
- (e) Appoint and remove the President of the corporation;
- (f) Adopt, amend and interpret the philosophy and mission of the corporation;
- (g) Approve and amend the capital and operating budgets of the corporation;
- (h) Authorize debt and financial transactions by the corporation in excess of amount to be fixed by the Sisters of Mercy of the Americas Northeast Community, Inc. from time to time;
- (i) Adopt and amend the strategic plan of the corporation;
- (j) Evaluate the corporation;
- (k) Approve the sale, acquisition, lease, transfer, mortgage, pledge or other devise or alienation of real or personal property of the corporation in excess of an amount to be fixed by the Sisters of Mercy of the Americas Northeast Community, Inc. from time to time.
- (l) Approve settlements of litigation when such settlements exceed available insurance coverage(s) or self-insurance funds(s)."

7. Paragraph "8" of the Certificate of Incorporation, which sets forth the conditions upon which the accomplishments of the purposes of the corporation are to be promoted and conducted, is hereby amended to read as follows:

"8. The accomplishment of the purposes of the corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the corporation, the Sisters of Mercy of the Americas Northeast

Community, Inc. and the ethical and moral teachings of the Roman Catholic Church.”

8. Paragraph “9” of the Certificate of Incorporation which sets forth the address to which the Secretary of State may send process served upon him as agent of the corporation is hereby amended and renumbered as paragraph “10” and a new paragraph “9” is added to identify the location of the office of the corporation within the State of New York (which paragraph was inadvertently deleted by a prior amendment) so that paragraphs “9” and “10” of the Certificate of Incorporation will read as follows:

“9 The office of the corporation shall be located in the City and County of Albany, State of New York.

10. The Secretary of the State of New York is hereby designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Sisters of Mercy of the Americas Northeast Community, Inc., 15 Highland View Road, Cumberland, Rhode Island 02864.”

9. The Secretary of the State of New York is hereby designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Sisters of Mercy of the Americas Northeast Community, Inc., 15 Highland View Road, Cumberland, Rhode Island 02864.


10. This Amendment to the Certificate of Incorporation of McAuley Living Services, Inc. was authorized by the affirmative vote of Sisters of Mercy of the Americas, Albany Regional Community, the sole member of said corporation. Said sole member was entitled to vote thereon and this Amendment to the Certificate of Incorporation of McAuley Living Services, Inc. was further authorized by written approval of the Sisters of Mercy of the Americas, Albany Regional Community (the sole member of McAuley Living Services, Inc.) in



accordance with the provision of Article IV, Section 3(a)(1) of the Bylaws of McAuley Living Services, Inc. Said written approval of the Sisters of Mercy of the Americas, Albany Regional Community was authorized by unanimous written consents of the entire Board of Directors of Sisters of Mercy of the Americas, Albany Regional Community to this Amendment, and said consents were submitted in lieu of a meeting of said Board of Directors of Sisters of Mercy of the Americas, Albany Regional Community.

11. This Amendment to the Certificate of Incorporation was further authorized by the unanimous vote of the Directors of the Corporation present and voting at a regular meeting of the Directors of the Corporation held on the 8th day of June, 2006.

IN WITNESS WHEREOF, the undersigned have signed this Certificate this 31<sup>st</sup> day of May, 2007.

  
Richard Iannello  
President

  
Sr. Jane Somerville, R.S.M.  
Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 9, 2009

Ms. Rachel Ryan  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203

Re: McAULEY Living Services, Inc

Dear Ms. Ryan:

Pursuant to the provisions of Section 460-a of the Social Services Law, due inquiry and investigation having been made, approval is hereby given this:

9th day of March, 2009

to the filing of the annexed photocopy of the:

Certificate of Amendment of the Certificate of Incorporation  
of  
McAULEY Living Services, Inc

on the condition that the purposes included in the certificate as filed are consistent with the following purposes: to establish, maintain and operate an adult home program as defined in Section 2(25) of the New York State Social Services Law, to establish and operate an assisted living program as defined in Section 461-1 of the New York State Social Services Law, to own and operate a Home Care Services Agency under Article 36 of the New York Public Health Law, provided, that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

You may file this letter with the proposed Certificate of Amendment with the NYS Department of State. Please send me a copy of the filing receipt for our files. Thank you

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy Warner', written over a faint, illegible stamp or background.

Guy Warner  
Director  
Bureau of Licensure and Certification

*Encl.*  
cc: J. Meloveck  
M. Hart  
M. Stone

CERTIFICATE OF INCORPORATION,

OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned hereby certifies:

1. The name of the corporation is THE MERCY CRAFT GUILD, INC..

2. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person except to the extent permissible under the Not-for-Profit Corporation Law.

3. The purposes for which the corporation is formed are:

(a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

(b) to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

4. The said corporation is organized exclusively for charitable purposes, no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors or officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under Section 170 (c)(2) of

A332555

the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue or Tax Law). Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such a manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine.

5. The corporation is a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

6. The office of the corporation shall be located in the City and County of Albany, State of New York.

7. The territory in which the corporation's activities are principally to be conducted are in the State of New York.

8. The names and addresses of the initial directors are:

Elizabeth Dovidio	634 New Scotland Avenue, Albany, NY
Mary Amata McDermott	634 New Scotland Avenue, Albany, NY
Barbara Roman	634 New Scotland Avenue, Albany, NY

9. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 634 New Scotland Avenue, Albany, New York.

10. Prior to the delivery of this certificate of incorporation to the department of state for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed hereto.

11. The subscriber below is of the age of nineteen years or over.

12. This certificate of incorporation is not for the incorporation of an existing unincorporated association or group in operation previous to this filing.

IN WITNESS WHEREOF, the undersigned incorporator, being at least nineteen years of age, has made, subscribed and acknowledged this certificate on this 28th day of July 1976.

*Elizabeth Dovidio*  
(Elizabeth Dovidio)

STATE OF NEW YORK)  
COUNTY OF ALBANY ) SS:

On this 28th day of July, 1976, before me personally came Elizabeth Dovidio, to me known and known to me to be the person described in and who executed the foregoing certificate of incorporation and she duly acknowledged to me that she did execute the same.

*Angela DiBernardo*

Angela DiBernardo  
Notary Public, State of New York  
Qualified in Albany County  
My Commission Expires March 30, 1978

I, John H. Penrod, a Justice of the Supreme Court of the State of New York, Third Judicial District, do hereby approve the foregoing Certificate of Incorporation of THE MERCY CRAFT GUILD, INC., and consent that the same be filed.

Dated: July 29, 1976  
Supreme Court, Albany County  
Albany, New York

*John H. Penrod*

Justice, Supreme Court  
Third Judicial District

John J. Castellani  
JOS. P. CASTELLANI  
ASST. NOTARY  
State of N.Y., 7-29-76  
Warren of N.Y. Co.

CERTIFICATE OF INCORPORATION,

OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned hereby certifies:

1. The name of the corporation is THE MERCY CRAFT GUILD, INC..

2. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person except to the extent permissible under the Not-for-Profit Corporation Law.

3. The purposes for which the corporation is formed are:

(a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

(b) to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

4. The said corporation is organized exclusively for charitable purposes, no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors or officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under Section 170 (c) (2) of

A332555

the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue or Tax Law). Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such a manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine.

5. The corporation is a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

6. The office of the corporation shall be located in the City and County of Albany, State of New York.

7. The territory in which the corporation's activities are principally to be conducted are in the State of New York.

8. The names and addresses of the initial directors are:

Elizabeth Dovidio	634 New Scotland Avenue, Albany, NY
Mary Amata McDermott	634 New Scotland Avenue, Albany, NY
Barbara Roman	634 New Scotland Avenue, Albany, NY

9. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 634 New Scotland Avenue, Albany, New York.

10. Prior to the delivery of this certificate of incorporation to the department of state for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed hereto.

11. The subscriber below is of the age of nineteen years or over.

12. This certificate of incorporation is not for the incorporation of an existing unincorporated association or group in operation previous to this filing.

IN WITNESS WHEREOF, the undersigned incorporator, being at least nineteen years of age, has made, subscribed and acknowledged this certificate on this 28th day of July 1976.

*Elizabeth Dovidio*  
(Elizabeth Dovidio)

STATE OF NEW YORK)  
COUNTY OF ALBANY ) SS:

On this 28th day of July 1976, before me personally came Elizabeth Dovidio, to me known and known to me to be the person described in and who executed the foregoing certificate of incorporation and she duly acknowledged to me that she did execute the same.

*Angela DiBernardo*

Angela DiBernardo  
Notary Public, State of New York  
Qualified in Albany County  
My Commission Expires March 30, 1978

I, John H. Penrod, a Justice of the Supreme Court of the State of New York, Third Judicial District, do hereby approve the foregoing Certificate of Incorporation of THE MERCY CRAFT GUILD, INC., and consent that the same be filed.

Dated: July 29, 1976  
Supreme Court, Albany County  
Albany, New York

*John H. Penrod*

Justice, Supreme Court  
Third Judicial District

John J.  
Jos. P. CASTELLANO  
ASST. NOTARY  
State of N.Y., 7-29-76  
Warrior of NY Co.





STATE OF NEW YORK  
DEPARTMENT OF LAW

ALBANY, N. Y. 12224

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

Telephone: 474-7206

July 29, 1976

John J. Crimmins, Esq.  
39 Philip Street  
Albany, New York 12207

Dear Mr. Crimmins:

Re: The Mercy Craft Guild, Inc.


Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

By

  
JOSEPH R. CASTELLANI  
Assistant Attorney General

A332555 / 5

CERTIFICATE OF INCORPORATION

OF  
THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

STATE OF NEW YORK  
DEPARTMENT OF STATE  
TAX \$ *none*  
FILING FEE \$ *50*

FILED JUL 30 1976

*M. J. Malone*

Secretary of State

BY

*P. O. Albany*  
*Type B*

FILER

JOHN J. CRIMMINS, III  
CATHOLIC CHARITIES  
39 PHILIP STREET  
ALBANY, NEW YORK ~~XXXX~~  
12207

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, the President and Secretary, respectively,  
of The Mercy Craft Guild, Inc., hereby certify:

1. The name of the corporation is The Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of said corporation was filed in the Office of the Department of State on July 30, 1976.
3. The Mercy Craft Guild, Inc. is a corporation as defined in sub-paragraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is a Type B Corporation under Section 201 of said law and will continue to be a Type B Corporation under Section 201 upon the filing of this Certificate of Amendment.
4. Paragraph 3(a) of the Certificate of Incorporation reads as follows:
  - (a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to

producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

5. Paragraph 3(a) of the Certificate of Incorporation is amended to read as follows:

(a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

6. Paragraph 9 of the Certificate of Incorporation reads as follows:

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 634 New Scotland Avenue, Albany, New York.

7. Paragraph 9 of the Certificate of Incorporation is amended to read as follows:

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 790 Madison Avenue, Albany.

New York 12208.

8. The above amendments to the Certificate of Incorporation were authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

9. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, the consent of a Justice of the Supreme Court for the Third Judicial District will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate and affirm its contents to be true under penalties of perjury this 13 day of March, 1979.

*Elizabeth A. Donohue*  
President

*Mary Annister McDonnell*  
Secretary

CONSENT OF JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, sitting in the Third Judicial District, wherein is located the principal office of The Mercy Craft Guild, Inc., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of The Mercy Craft Guild, Inc. and the filing thereof.

*James D. Weber*  
Justice of the Supreme Court

DATED:

*April 17, 1979*

*4*



STATE OF NEW YORK  
DEPARTMENT OF LAW

ROBERT ABRAMS  
ATTORNEY GENERAL

ALBANY, N.Y. 12224  
(518) 475-7206

April 5, 1979

Charles J. Tobin, III, Esq.  
Tobin & Dempf, Esqs.  
100 State Street  
Albany, New York 12207

Dear Mr. Tobin:

Re: The Mercy Craft Guild, Inc.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By *John E. Lynch*  
JOHN E. LYNCH  
Assistant Attorney General

RECEIVED  
APR 9 1979

TOBIN & DEMPFF

-6

A569048

CERTIFICATE OF AMENDMENT  
 OF  
 THE CERTIFICATE OF INCORPORATION OF  
 THE MERCY CRAFT GUILD, INC.  
 UNDER SECTION 402 OF THE  
 NOT-FOR-PROFIT CORPORATION LAW

DATED: \_\_\_\_\_

LAW OFFICES  
 TOBIN AND DEMPFF  
 100 STATE STREET  
 ALBANY, N. Y. 12207

JOB  
 TOBIN

463-1177

nfp-type B

7/30/76

A332555-5

Albany, Albany Co.

not add: 534 New Scotland  
 Ave,  
 Albany, NY

7

STATE OF NEW YORK  
 DEPARTMENT OF STATE  
 APR 18 1979  
 AMT. OF CHECK \$ 35  
 FILING FEE \$ 30  
 TAX \$  
 COPY \$  
 CERT \$  
 REFUND \$

BY:                       
 Albany



CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, the President and Secretary, respectively, of The Mercy Craft Guild, Inc., hereby certify:

1. The name of the corporation is The Mercy Craft Guild, Inc.  
2. The Certificate of Incorporation of said corporation was filed in the Office of the Department of State on July 30, 1976. A Certificate of Amendment to the Certificate of Incorporation was filed in the Office of the Department of State on April 18, 1979.

3. The Mercy Craft Guild, Inc. is a corporation as defined in sub-paragraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is a Type B Corporation under Section 201 of said law and will continue to be a Type B Corporation under Section 201 upon the filing of this Certificate of Amendment.

4. Paragraph 2 of the Certificate of Incorporation reads as follows:

2. The corporation is a corporation as defined in subpara-

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graph (a)(5) of Section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person except to the extent permissible under the Not-for-Profit Corporation Law.

5. Paragraph 2 of the Certificate of Incorporation is amended to read as follows:

2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person.

6. The above amendment to the Certificate of Incorporation was authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, the consent of a Justice of the Supreme Court for the Third Judicial District will be endorsed upon or annexed hereto.

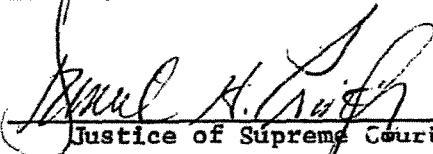
IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate and affirm its contents to be true under penalties of perjury this 9<sup>th</sup> day of AUGUST, 1979.

Elizabeth A. Dwyer  
President

Lucas Dean Roche  
Secretary

CONSENT OF JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, sitting in the Third Judicial District, wherein is located the principal office of The Mercy Craft Guild, Inc., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of The Mercy Craft Guild, Inc. and the filing thereof.

  
Justice of Supreme Court

DATED: *September 7, 1979*  
*Albany New York*

4606736 -4

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
THE MERCY CRAFT GUILD, INC.  
UNDER SECTION 402 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

DATED: \_\_\_\_\_, 1979

407558

STATE OF NEW YORK  
DEPARTMENT OF STATE.

FILED SEP 17 1979  
AMT OF CHECK \$ 30  
FILING FEE \$ 30  
TAX \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
BY: \_\_\_\_\_

*Albany*  
*Type B*

7/30/76

Albany

A 332555 - 5

NFP Type B

Not. Add - The Corp 790 Madison Ave  
Albany NY *attn!*

TOD TOBIN, ESQ

LAW OFFICES  
TOBIN AND DEMPF  
100 STATE STREET  
ALBANY, N. Y. 12207

L

CERTIFICATE OF AMENDMENT

OF

THE CERTIFICATE OF INCORPORATION OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, the President and Secretary, respectively, of  
The Mercy Craft Guild, Inc., hereby certify:

1. The name of the corporation is The Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of said corporation was filed in the Office of the Department of State on July 30, 1976. The corporation was formed under the Not-For-Profit Corporation Law.
3. The Mercy Craft Guild, Inc. is a corporation as defined in subparagraph (a) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law and is a Type B Corporation under Section 201 of said law and will continue to be a Type B Corporation under Section 201 upon the filing of this Certificate of Amendment.
4. The Certificate of Incorporation of The Mercy Craft Guild, Inc. is hereby amended to effect a change in the Corporate Name pursuant to Section 801(b) (1) of the Not-For-Profit Corporation Law. Paragraph 1 of the Certificate of Incorporation is hereby amended to read as follows:
  - (a) The name of the corporation is  
MERCY LIFE CENTER, INC.
5. Paragraph 9 of the Certificate of Incorporation is amended to read as follows:

6410508

The post office address to which the Secretary of State shall mail a copy of any ~~PROCESS~~ is 634 New Scotland Avenue, Albany, New York 12208. The Secretary of State of New York is hereby designated the agent of the corporation upon whom process against it may be served.

6. The above amendments to the Certificate of Incorporation were authorized by a vote of a majority of the entire Board of Directors voting in person at a meeting duly called and held for that purpose on the 2nd day of JULY, 1986. There are no members eligible to vote.

7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, the consent of a Justice of the Supreme Court for the Third Judicial District will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate and affirm its contents to be true under penalties of perjury this 8th day of August, 1986.

*Elizabeth A. Dovisio*  
Elizabeth A. Dovisio, President

*Barbara A. Roman*  
Barbara A. Roman, Secretary

2

CONSENT OF JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, sitting in the Third Judicial District, wherein is located the principal office of The Mercy Craft Guild, Inc., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of The Mercy Craft Guild, Inc. and the filing thereof.

*Edward J. Conway*  
Justice of the Supreme Court

DATED:

9-27-86  
*E. Conway*

3

6410585

*JE P. 11/30/76*

*4*  
*A337555*  
*Account*  
*LH H 606736-4*  
*type B*

CERTIFICATE OF AMENDMENTS  
OF  
THE CERTIFICATE OF INCORPORATION OF  
THE MERCY CRAFT GUILD, INC.

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED OCT 8 1985

AMT. OF CHECK: *40*  
FILING FEE: *30*  
TAX IS  
CORP  
COMM  
DEP  
REG

DATED:

*10*  
*md*  
*Albany*  
*type B*

*not add the Corp*  
*790 members*  
*Albany*  
*incorporated*  
*10/10/76*

LAW OFFICES  
TOBIN AND DEMPFF  
100 STATE STREET  
ALBANY, N. Y. 12207

OCT 7 1 PM '85



F910206000061

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
MERCY LIFE CENTER, INC.

(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned hereby certify:

1. The name of the corporation is:

MERCY LIFE CENTER, INC.

~~The name under which the corporation was formed is Mercy Craft Guild, Inc.~~

2. The Certificate of Incorporation of Mercy Life Center, Inc. was filed by the Department of State on the 30th day of July, 1976, under Section 402 of the Not-for-Profit Corporation Law of the State of New York.

3. Mercy Life Center, Inc. is a corporation as defined in sub-paragraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of that law. The corporation shall hereafter continue to be a Type B corporation as defined in Section 201 of the Not-For-Profit Corporation Law.

4. The Certificate of Incorporation is amended as follows:

(a) The identity of the sole member of the corporation is changed, by eliminating the present Paragraph 6 of the certificate and substituting the following Paragraph 6 in lieu thereof:

"6. The Religious Sisters of Mercy, Albany, is the sole member of the corporation. As such, the Religious Sisters of Mercy, Albany shall be entitled to all rights and powers of a member under the laws of the State of New York, this Certificate of Incorporation and the Bylaws of the corporation."

(b) The reserved powers of the sole member of the corporation, and the manner in which said reserved powers are exercised, are amended, by eliminating the present Paragraph 7 of the certificate and substituting the following Paragraph 7 in lieu thereof:

"7. In addition to any other requirements under New York law, this Certificate of Incorporation or the Bylaws of the corporation, the following powers shall be expressly reserved to Religious Sisters of Mercy, Albany as the sole member of the Corporation. Action by the corporation shall not be taken until the Religious Sisters of Mercy, Albany has exercised its reserved powers. The Religious Sisters of Mercy, Albany shall exercise the powers reserved to it in the manner required by its governance documents. The following powers

shall be exercised by the Religious Sisters of  
Mercy, Albany:

- (a) adoption, amendment or restatement of the Articles or Certificate of Incorporation of the corporation;
- (b) adoption, amendment or restatement of the Bylaws of the corporation;
- (c) establishment or dissolution of organizational relationships by the corporation, including, without limitation, subsidiary corporations, and significant partnerships, joint ventures, and mergers;
- (d) appointment and removal of the directors of the corporation;
- (e) appointment and removal of the chief executive officer of the corporation;
- (f) adoption, amendment, and official interpretation of the philosophy and mission of the corporation;
- (g) adoption and amendment of the budgets of the corporation;
- (h) authorization of significant financial transactions by the corporation;
- (i) adoption and amendment of the strategic plan of the corporation;
- (j) evaluation of the corporation; and
- (k) in the event the governing documents of the corporation require the recommendation of the board of directors of the corporation for an action, such action may be authorized by Religious Sisters of Mercy, Albany without a recommendation by the board of directors following appropriate dialogue between the board of directors and Religious Sisters of Mercy, Albany."

(c) Paragraph 9 of the certificate is amended to: (1)  
amend the conditions upon which the accomplishment of the

purposes of the corporation are to be promoted and conducted; and  
(2) renumber said paragraph (there being no Paragraph 8 in the  
original Certificate of Incorporation), by eliminating the  
present Paragraph 9 and substituting the following Paragraphs 8  
and 9 in lieu thereof:

"8. The accomplishment of the purposes of the  
corporation must be promoted and conducted in a manner  
consistent with the philosophies and missions of the  
corporation, and the Religious Sisters of Mercy, Albany  
and the ethical and moral teachings of the Roman  
Catholic Church.

9. The office of the corporation shall be located in  
the City and County of Albany, State of New York."

5. The above amendments to the Certificate of  
Incorporation were authorized by vote of the majority of the  
entire Board of Directors of the corporation, approved by the  
vote of MercyCare Corporation, the sole corporate member of the  
corporation, and by Eastern Mercy Health System, the sole  
corporate member of MercyCare Corporation, and ratified by the  
Religious Sisters of Mercy, Albany, (the religious sponsor of the  
corporation).

6. The Secretary of State is designated as the agent of  
the corporation upon whom process against it may be served. The  
post office address to which the Secretary of State shall mail a  
copy of any process against the corporation served upon him is  
634 New Scotland Avenue, Albany, New York 12208.

7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed or annexed hereto.

8. Notice to the attorney general, as required by law, has been given.

IN WITNESS WHEREOF, we have executed this certificate this 7 day of December, 1990.

*Sister Elizabeth Dovidio, President*  
Sister Elizabeth Dovidio, President

*Sister Mary Coons, Secretary*  
Sister Mary Coons, Secretary

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

Sister Elizabeth Dovidio, being duly sworn, depose and state that I am the President of Mercy Life Center, Inc., the corporation named in and described in the foregoing Certificate and that I have read the foregoing Certificate and know the contents thereof to be true, except as to those matters, therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

*Sister Elizabeth Dovidio, President*  
Sister Elizabeth Dovidio, President

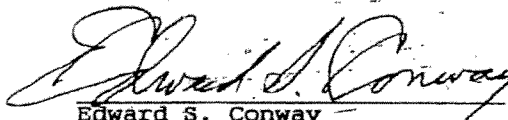
Sworn to before me this 7 day of December, 1990.

*Joseph A. Pellegrino*  
Notary Public  
State of New York  
GLADYS C. TOLLESON  
Notary Public, State of New York  
Qualified in Albany County  
No. 39005  
Commission Expires March 30 1991

5

JUDICIAL CONSENT

I, Edward S. Conway, a Justice of the Supreme Court of the State of New York, of the Third Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Mercy Life Center, Inc. and consent the same be filed.



Edward S. Conway  
Justice Supreme Court  
Third Judicial District

Dated: February 5, 1991

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