

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

November 2, 2023
10:00 a.m.

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

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

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

Residential Health Care Facilities - Establish/Construct

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	192204 E	Highland Nursing Home, Inc. d/b/a North Country Nursing & Rehabilitation Center (St. Lawrence County)
2.	231011 E	Fairport SNF LLC d/b/a WeCare at Fairport Nursing & Rehabilitation (Monroe County)
3.	231044 E	Sunset SNF Operations LLC d/b/a Sunset Lake Center for Rehabilitation and Nursing (Sullivan County)
4.	231220 E	Clinton County Nursing Home (Clinton County)
5.	231259 E	Tupper Lake Center LLC d/b/a Tupper Lake Center for Nursing and Rehabilitation (Franklin County)

Home Care Service Agency Licensures

Exhibit # 2

New LHCSAs

<u>Number</u>	<u>Applicant/Facility</u>
1. 231010 E	Vilas Home Care, LLC (Geographical Service Area: Clinton, Essex, and Franklin Counties)

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>
1. 222238 E	Auburn Assisted Living LLC (Geographical Service Area: Cayuga County)
2. 222220 E	Kris Agency And Home Care, Inc. (Geographical Service Area: Bronx, Kings, Nassau, New York, and Queens Counties)
3. 222255 E	Riverside Select Services, LLC d/b/a Cottage Homecare Services (Geographical Service Area: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties)

B. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services- Construction

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 231325 C	NYU Langone Hospitals (Nassau County)

Cardiac Services - Construction

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 231103 C	NYU Langone Hospital-Brooklyn (Kings County)

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 5

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231369 E	Westside ASC LLC d/b/a Westside Ambulatory Surgery Center (New York County)
2.	231380 B	Mohawk Valley Surgery Center (Oneida County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 6

	<u>Number</u>	<u>Applicant/Facility</u>
1.	221277 E	Medcare LLC (Kings County)

D. Certificates

Exhibit # 7

Certificate of Incorporation

Applicant

The Foundation of Catholic Health (Erie County)

Restated Certificate of Incorporation

Applicant

Rochester General Hospital Association, Inc. (Monroe County)

Certificate of Assumed Name

Applicant

VJJ Holding Company, LLC (Suffolk County)

Certificate of Dissolution

Applicant

DOJ Dialysis Center Corp.

Wartburg Nursing Home, Inc.



Project # 192204-E
Highland Nursing Home, Inc. d/b/a
North Country Nursing & Rehabilitation Center

Program: Residential Health Care Facility **County:** St. Lawrence
Purpose: Establishment **Acknowledged:** October 24, 2019

Executive Summary

Description

Highland Nursing Home, Inc., a 140-bed, proprietary, Article 28 residential health care facility (RHCF) at 182 Highland Road, Massena (St. Lawrence County), requests approval to transfer 100% ownership from three current shareholders to nine new shareholders.

On November 30, 2018, Highland Nursing Home, Inc. entered into a Stock Purchase Agreement (SPA) to sell all issued and outstanding capital stock in the corporation. This initial SPA was then amended three times, on July 10, 2019, July 1, 2022, and January 23, 2023, based on shareholder changes. The details of the initial and amended SPAs can be found in the Financial Analysis section of the exhibit.

Ownership of Highland Nursing Home, Inc. before and after the requested change is as follows:

<u>Current Ownership</u>	
Highland Nursing Home, Inc.	
<u>Shareholders:</u>	<u>%</u>
Jeffrey Goldstein	33.4%
Alexander Sherman	33.3%
<u>Lea Sherman</u>	<u>33.3%</u>
Total	100%

<u>Proposed Ownership</u>	
Highland Nursing Home, Inc.	
<u>Shareholders:</u>	<u>%</u>
Menajem Salamon	35.00%
Mordejai Salamon	17.00%
Joseph Landa	13.75%
Joshua Landa	13.75%
Suri Reich	5.00%
Yossi Mayer	5.00%
Hellen Majerovic	4.50%
Blimie Perlstein	5.00%
<u>Tirtza Salamon</u>	<u>1.00%</u>
Total	100%

Highland Nursing Home, Inc. leases the premises from 182 Highland Road, LLC. There is a relationship between the proposed new shareholders of Highland Nursing Home, Inc. and the members of 182 Highland Road, LLC, in that ownership is overlapping but not identical.

OALTC Recommendation
Contingent Approval

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

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

Financial Summary

There are no project costs associated with this application. The purchase price of the stock is \$1,863,461, funded through the assumption of a 10-year Promissory Note at 3% interest. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$14,699,483	\$14,699,483
Expenses	14,351,254	14,435,347
Net Income	\$348,229	\$264,136

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project pursuant to Public Health Law §2802-b, as it was received by the Department on October 17, 2019.

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a photocopy of complete and fully executed Shareholder Stock Certificates acceptable to the Department. [CSL]
2. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]

Approval conditional upon:

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

Council Action Date

November 16, 2023

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	Highland Nursing Home Inc.	North Country Nursing and Rehabilitation Center
Address	182 Highland Road Massena, NY 13662	Same
RHCF Capacity	140	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Highland Nursing Home Inc. <u>Shareholders:</u> Lea Sherman 33.3% Jeffrey Goldstein 33.4% Alexander Sherman 33.3%	Highland Nursing Home Inc. <u>Shareholders:</u> Menajem (Mark) Salamon* 35.00% Mordejai (Michael) Salamon** 17.00% Joseph Landa*** 13.75% Joshua Landa 13.75% Suri Reich 5.00% Yossi Mayer 5.00% Blimie Perlstein 5.00% Helen Majerovic 4.50% Tirtza Salamon 1.00% <i>* President and Chief Executive Officer</i> <i>** Vice President</i> <i>*** Secretary and Treasurer</i>

Character and Competence

Menajem (Mark) Salamon lists concurrent employment as Executive Director and Licensed Nursing Home Administrator of Gold Crest Care Center, Bronx, NY, as well as Chief Executive Officer of Highland Nursing Home d/b/a North Country Center for Nursing and Rehabilitation (the subject facility). Menajem (Mark) holds a bachelor's degree in Jewish Studies from the Israel Torah Research Institute and is licensed as a Nursing Home Administrator in both New York and New Jersey, with the New York license currently in good standing. The following healthcare facility ownership interests were disclosed:

New York Nursing Homes

Gold Crest Care Center (7.5%)	01/2022 to present
Windsor Park Rehab & Nursing Center (7.5%)	01/2022 to present

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (40%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present

Mordejai (Michael) Salamon lists concurrent employment as Director of Business Development at Gold Crest Care Center, Bronx, NY (responsibilities include marketing, implementation of new strategic initiatives, and optimizing occupancy) and as Chief Marketing Officer at Tupper Lake Center, LLC, Tupper Lake, NY. Previously, Mordejai (Michael) was Director of Marketing for Fieldston Lodge Care Center, Bronx, NY. Mordejai (Michael) holds a bachelor's degree in Business Management from Fairleigh Dickenson University and discloses the following healthcare facility ownership interests:

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (10%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present

Joseph Landa lists employment as Financial Supervisor at Hollis Park Nursing Home, Hollis, NY, and prior to employment at Hollis Park Nursing Home. Joseph was a student at Shor Yoshuv Institute in Lawrence, NY, has a high school diploma, and discloses the following healthcare facility ownership interests:

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (15%)	10/2016 to present
Torrington Center For Nursing and Rehabilitation [CT] (36.5%)	11/2021 to present

Joshua Landa reports providing Fiscal Oversight for the following facilities: Windsor Park Nursing Home, Queens Village, NY; Valley View Manor, Norwich, NY; Sunnyside Care Center, East Syracuse, NY; and Bethany Gardens, Rome, NY. Joshua is also currently a student of Judaiah Studies at Shor Yoshuv Institute in Lawrence, NY, and discloses the following healthcare facility ownership interests:

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (15%)	10/2016 to present
Torrington Center For Nursing and Rehabilitation [CT] (36.5%)	11/2021 to present

Suri Reich reports working in Social Services for the nursing home, Wellsville Manor Care Center, Wellsville, NY, remotely from Brooklyn, NY. Previously, Suri was employed as a teacher for Beth Jacob of Boro Park. Suri has a high school diploma and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Oak Hill Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present
River View Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present

Yossi Mayer lists concurrent employment working in Maintenance for the nursing home Fieldston Lodge Care Center, Bronx, New York, and as Assistant Administrator for the nursing home Gold Crest Care Center, Bronx, New York. Yossi holds a bachelor's degree in Talmudic Law from Yeshivas Mir Yerushalayim and a bachelor's degree in Advanced Talmudic Law from United Talmudical Seminary. The following healthcare facility ownership interests are disclosed:

New York Nursing Homes

Oak Hill Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present
River View Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present

Out-of-State Nursing Homes

West Haven Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present

Blimie Perlstein lists employment as Owner/Broker of P&G Brokerage, Inc., which is an insurance brokerage firm in Brooklyn, NY. Blimie has a high school diploma and did not disclose any healthcare facility ownership interests.

Helen Majerovic lists employment as a Receptionist with Flawless Dental in Brooklyn, NY. Helen has a high school diploma and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Oak Hill Rehabilitation and Nursing Care Center (5%) 02/2019 to present
 River View Rehabilitation and Nursing Care Center (10%) 02/2019 to present

Tirtza Salamon lists employment as a Bookkeeper (part-time) for Waterbury Center for Nursing and Rehabilitation, Waterbury, CT. Tirtza has a high school diploma and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Windsor Park Rehab and Nursing Center (6%) 08/2023 to present

Quality Review

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Proposed Owner	Total Nursing Homes	Duration of Ownership*			
		< 48 Months		48 months or more	
		Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Menajem (Mark) Salamon	8	7	71.4%	1	100%
Mordejai (Michael) Salamon	6	5	100%	1	100%
Joseph Landa	2	1	100%	1	100%
Joshua Landa	2	1	100%	1	100%
Suri Reich	2	0	N/A	2	50%
Yossi Mayer	7	5	100%	2	50%
Blimie Perlstein	0	N/A	N/A	N/A	N/A
Helen Majerovic	2	0	N/A	2	50%
Tirtza Salamon	1	1	0%	N/A	N/A

*Duration of Ownership as of 12/08/2022
 Data Date: 09/2022

New York. The proposed owner's portfolio includes ownership in four New York facilities, three of which have a CMS overall quality rating of above average or higher. The remaining facility, Oak Hill Rehabilitation and Nursing, has a CMS overall quality rating of one star (much below average rating). To improve the quality of Oak Hill Rehabilitation and Nursing, the applicant indicated the following:

Regarding Oak Hill Rehabilitation and Nursing, the applicant states that the low overall rating was due to an error in the Payroll-Based Journal reports that were submitted to CMS. As a result of this error, the facility's staffing rating went from two (2) stars to one (1) star, which caused the facility's overall rating to decrease to one (1) star. This error has since been corrected, and the facility expects that its overall star rating will be two (2) stars within the near term.

Connecticut. The proposed owner's portfolio includes ownership in six Connecticut facilities, which have a CMS overall quality rating of below average or much below average. Please note: New Haven Center for Nursing and Rehabilitation is on the CMS SFF (Special Focus Facility) Candidate List (added to the list 13 months ago as of 09/2023; thus, was added to the list while under the current management). To improve the quality at the six Connecticut facilities, the applicant indicated the following:

Regarding Advanced Center for Nursing and Rehabilitation, West Haven Center for Nursing and Rehabilitation, and Southport Center for Nursing and Rehabilitation, the applicant states that there has not been a Department of Health survey at these facilities in more than two (2) years.

As a result, these facilities' star ratings have not been updated since that time. Although these facilities have not had any surveys in the past two (2) years, these facilities expect the next survey to be positive, which should serve to increase the overall star rating at these facilities.

Regarding New Haven Center for Nursing and Rehabilitation, the applicant states that New Haven Center for Nursing and Rehabilitation received several G-level tags that ultimately led to the facility being placed on the Special Focus Facility (SFF) Candidate List. Mr. Salamon's affiliation with this facility began in November of 2021, which is a period of approximately nine (9) months prior to the facility being placed on the SFF Candidate List in August of 2022. Mr. Salamon states that it often takes longer than nine (9) months for positive institutional changes to be reflected in the quality of a nursing facility. However, as a testament to the positive operational improvements that have been made to the facility, Mr. Salamon reports that, as of July 25, 2023, the Connecticut Department of Public Health has removed the Independent Nurse Consultant (INC) who was placed at the facility as part of the Connecticut Department of Public Health's regulatory oversight of all new operators of nursing homes located within Connecticut. The removal of the INC was the result of several positive quality inspections conducted by the INC. Please see Attachment 2 for a copy of the letter sent to the facility regarding the removal of the INC. Mr. Salamon also states that his group continues to work with facility staff to improve quality even further. As additional evidence supporting the positive changes being made at the facility, Mr. Salamon reports that the facility received no G-level tags or Immediate Jeopardy violations during the facility's last survey. As a result of these positive developments, Mr. Salamon is optimistic that this facility will be removed from the SFF Candidate List within the near term.

Regarding Waterbury Center for Nursing and Rehabilitation and Torrington Center for Nursing and Rehabilitation, these facilities' current overall star rating of two (2) stars represents a one-(1)-star increase, as compared to these facilities' overall star rating in 2021 when Mr. Salamon first became affiliated with these facilities. As Mr. Salamon continues to make operational improvements at the facility, he is hopeful that these facilities' overall star rating will increase to three (3) stars within the near term.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Highland Nursing Center	Subject Facility	*	*	‡	***
Gold Crest Care Center	Current	*****	****	*****	**
	01/2022	*****	*****	*****	**
Windsor Park Rehab & Nursing Center	Current	*****	*****	****	***
	01/2022	*****	*****	****	***
Oak Hill Rehabilitation and Nursing Care Center	Current	*	**	*	*
	02/2019	*	**	***	*
River View Rehabilitation and Nursing Care Center	Current	****	****	*****	*
	02/2019	*	*	**	***
Connecticut					
Advanced Center for Nursing and Rehabilitation	Current	*	*	***	*
	10/2016	*	*	***	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
West Haven Center for Nursing and Rehabilitation	Current	*	*	***	*
	11/2021	***	**	*****	***
Southport Center for Nursing and Rehabilitation	Current	*	*	‡	**
	11/2021	*	*	**	**
New Haven Center for Nursing and Rehabilitation†	Current	*	*	***	*
	11/2021	*	*	**	***
Waterbury Center for Nursing and Rehabilitation	Current	**	**	*****	***
	11/2021	**	*	***	*****
Torrington Center for Nursing and Rehabilitation	Current	**	**	***	**
	11/2021	*	*	*****	***

‡ This facility submitted data that could not be verified through an audit.

† Special Focus Facility Candidate (on the list for 13 months as of 09/2023)

Data date: 09/2023

Enforcement History

New York

A review of the operations of Gold Crest Care Center for the time period indicated above reveals no enforcements.

A review of the operations of Windsor Park Rehab & Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of River View Rehabilitation and Nursing Care Center for the time period indicated reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-20-077 for surveillance findings on 10/23/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control. The facility failed to create and implement a CDC and State Operations Manual consistent policy, which effectively communicated a COVID-19-positive resident's status to EMS and the hospital when transferring a symptomatic resident to the hospital. In addition, the facility failed to place a mask on a COVID-19-positive resident prior to EMS transfer to the hospital.
- The facility was assessed a federal CMP of \$3,250 on 10/23/2020 for failure to provide and implement an infection prevention and control program.

A review of the operations of Oak Hill Rehabilitation and Nursing Care Center for the time period indicated reveals the following:

- The facility was assessed federal CMPs of \$1,965 on 11/22/2021, \$1,638 on 11/15/2021, \$1,310 on 08/30/2021, \$975 on 12/14/2020 and \$655 on 12/07/2020 for failure to report COVID data.
- The facility was fined \$18,000 pursuant to Stipulation and Order NH-22-067 for surveillance findings on 05/10/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. The facility failed to possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with Federal Centers for Disease Control guidance, for at least 60 days by 08/31/2020, at a rate of usage equal to the average daily usage of PPE based upon the amount of PPE the Facility reported using on each day from 04/19/2020 to 04/27/2021.

Connecticut

A review of the operations of Advanced Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$40,724 on 04/07/2022 for failure to provide appropriate treatment and care according to orders, resident's preferences and goals, and for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of West Haven Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$6,630 on 09/20/2022 for failure to provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and the resident's advance directives and for failure to ensure services provided by the nursing facility meet professional standards of quality.

A review of the operations of Southport Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$8,648 on 06/24/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of New Haven Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$199,306 on 08/03/22 for failure to ensure services provided by the nursing facility meet professional standards of quality and for failure to provide enough nursing staff every day to meet the needs of every resident and have a licensed nurse in charge on each shift. Specifically, the facility failed to administer medications as prescribed (to 21 residents), failed to notify the DNS and physician when medications were not administered, failed to complete assessments of the residents' condition after medications were omitted, failed to monitor residents who had significant medication omissions and failed to accurately document the medication omissions. Further, the facility failed to ensure licensed staff followed professional standards of practice, including report to the oncoming and off-going shifts, narcotic count, and ensuring the security of the narcotic keys.
- The facility was assessed a federal CMP of \$51,077 on 04/27/22 for failure to provide appropriate treatment and care according to orders, resident's preferences and goals and for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.

A review of the operations of Waterbury Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a CMP of \$9,750 on 06/23/2022 for an infection control deficiency per the applicant.

A review of the operations of Torrington Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650 on 01/03/2022 for failure to report COVID data.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2022) operations and an operating budget, in 2024 dollars, for the first and third years of operations after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid-FFS	\$197.36	\$5,316,686	\$197.36	\$5,369,853	\$197.36	\$5,369,853
Medicaid-MC	\$197.36	457,481	\$187.51	438,953	\$187.51	438,953
Medicare-FFS	\$424.39	6,617,554	\$424.39	6,683,729	\$424.39	6,683,729
Medicare-MC	\$424.39	92,093	\$424.72	93,014	\$424.72	93,014
Private Pay	\$404.07	1,627,614	\$404.00	1,643,890	\$404.00	1,643,890
Assessment Rev		0		447,162		447,162
Other*		<u>22,882</u>		<u>22,882</u>		<u>22,882</u>
Total Revenue		\$14,134,310		\$14,699,483		\$14,699,483
 <u>Expenses:</u>						
Operating	\$200.47	\$9,842,078	\$201.15	\$9,974,196	\$202.85	\$10,058,289
Capital	<u>\$87.58</u>	<u>4,299,706</u>	<u>\$88.27</u>	<u>4,377,058</u>	<u>\$88.27</u>	<u>4,377,058</u>
Total Expense	\$288.05	\$14,141,784	\$289.42	\$14,351,254	\$291.12	\$14,435,347
Net Income:		<u>(\$7,474)</u>		<u>\$348,229</u>		<u>\$264,136</u>
Patient Days:		49,095		49,586		49,586
Utilization %:		96.08%		97.04%		97.04%

* Includes Investment income and vending machine revenues

Additional notes concerning the submitted RHCf operating budget follow:

- The Current Year reflects the facility's 2022 revenues and expenses.
- Medicaid FFS revenue is based on the facility's 2022 Medicaid Regional Pricing rate. The per diem for Medicaid Manage Care is estimated at 95% of the Medicaid FFS rate.
- The Current Year Medicare rate is the actual daily rate experienced by the facility during 2022. The projected Year One and Year Three Medicare rates are based on the average daily rate experienced during 2022. The projected Private Pay rate is based on the average daily rate experienced during 2022.
- Projected expenses are based on the current operator's 2022 costs, adjusted to include inflation and increased volume.
 - The projected percentage of direct care staffing costs to projected facility revenues is 49.2% in Year One and 50.9% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 70.9% in Year One and 73.2% in Year Three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 2.4% in Year One and 1.8% in Year Three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- The facility's projected utilization is 97.04% in Years One and Three. Occupancy was 93.6% as of September 13, 2023, a significant recovery from the pandemic impact when the utilization from 2018 through 2021 averaged 60.8% and was 78.75% at year-end 2021.

Utilization by payor source for the first and third year after the change in ownership is summarized below:

Payor	Current Year 2022		Year One 2024		Year Three 2026	
	Days	%	Days	%	Days	%
Medicaid FFS	26,939	54.88%	27,208	54.87%	27,208	54.87%
Medicaid MC	2,318	4.72%	2,341	4.72%	2,341	4.72%
Medicare FFS	15,593	31.76%	15,749	31.76%	15,749	31.76%
Medicare MC	217	0.44%	219	0.44%	219	0.44%
Private Pay	<u>4,028</u>	<u>8.20%</u>	<u>4,069</u>	<u>8.21%</u>	<u>4,069</u>	<u>8.21%</u>
Total	49,095	100%	49,586	100%	49,586	100%

The breakeven utilization is projected at 94.89% for the first year.

Stock Purchase Agreement (SPA)

The applicant submitted an executed SPA to acquire the operating entity's corporate stock. The terms are summarized below:

Date:	November 30, 2018
Operator:	Highland Nursing Home, Inc.
Seller:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Buyers:	David Landa, Menajem (Mark) Salamon, or their designees
Asset Acquired:	100% of the issued and outstanding corporate stock in Highland Nursing Home, Inc.
Purchase Price:	\$2,050,000
Payment of Purchase Price:	\$300,000 * paid upon execution, held in escrow; \$1,750,000 balance due at closing

* This amount was held in escrow, and all interest accrued thereon was refunded to the Buyers at the Real Estate closing (May 31, 2019).

First Amendment to Stock Purchase Agreement:

The applicant submitted an executed First Amendment to assign David Landa and Menajem Salamon's rights under the original Agreement to ten new shareholders. The terms are summarized below:

Date:	July 10, 2019
Sellers:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Original Buyers:	David Landa and Menajem Salamon and their designees
New Buyers:	Joseph Landa (13.75%, 27.5 shares); Joshua Landa (13.75%, 27.5 shares); Menashe Eisen (5%, 10 shares); Suri Reich (5%, 10 shares); Yossi Mayer (5%, 10 shares); Hellen Majerovic (4.50%, 9 shares); Blimie Perlstein (5%, 10 shares); Mordejai Salamon (17%, 34 shares); Menajem Salamon (30%, 60 shares); Tirtza Salamon (1%, 2 shares).
Provision:	Acquisition of stocks in Highland Nursing Home, Inc. The Original Buyers assign, transfer, and release their right, title, and interest as Buyers under the Stock Purchase Agreement dated November 30, 2018, to New Buyers.
Price:	\$1,863,461 (balance due on a \$2,050,000 Promissory Note between Lea Sherman, Jeffrey Goldstein, and Alexander Sherman as borrowers and 182 Highland Road, LLC as Lender)
Payment of Purchase Price:	\$1,863,461 via the assumption of a 10-year Promissory Note at 3% interest between the current shareholders (Sellers, Borrowers) and 182 Highland Road, LLC (Lender)

The \$1,863,461 purchase price for the operations' corporate stock will be satisfied by the assumption of the balance due on a Promissory Note (original principal valued at \$2,050,000) between Lea Sherman, Jeffrey Goldstein, and Alexander Sherman (Borrowers) and 182 Highland Road LLC (Lender). Sellers' expenses of \$416,640 related to the original SPA and Real Estate Contract were refunded at the Real

Estate closing. Per note seven in the 2021 certified financial statement, the \$1,863,461 note balance will be canceled upon closing the stock purchase agreement.

Second Amendment to Stock Purchase Agreement:

The applicant submitted an executed Second Amendment whereby Menashe Eisen withdraws as Buyer. David Landa will replace Menashe Eisen as one of the 10 proposed shareholders of Highland Nursing Home, Inc. The terms are summarized below:

Date:	July 1, 2022
Sellers:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Original Buyers:	David Landa and Menajem Salamon and their designees
New Buyers:	Joseph Landa (11%, 22 shares); Joshua Landa (11%, 22 shares); David Landa (10.5%, 21 shares); Suri Reich (5%, ten shares); Yossi Mayer (5%, 10 shares); Hellen Majerovic (4.50%, 9 shares); Blimie Perlstein (5%, 10 shares); Mordejai Salamon (17%, 34 shares); Menajem Salamon (30%, 60 shares); Tirtza Salamon (1%, 2 shares).

Third Amendment to Stock Purchase Agreement:

The applicant submitted an executed Third Amendment whereby David Landa withdrew as Buyer. David Landa's 10.5% interest was taken by three of the nine proposed shareholders (Menajem Salamon 5%, Joseph Landa 2.75%, and Joshua Landa 2.75%) of Highland Nursing Home, Inc. The terms are summarized below:

Date:	January 23, 2023
Sellers:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Original Buyers:	David Landa and Menajem Salamon and their designees
New Buyers:	Joseph Landa (13.75%, 27.5 shares); Joshua Landa (13.75%, 27.5 shares); Suri Reich (5%, 10 shares); Yossi Mayer (5%, 10 shares); Hellen Majerovic (4.50%, 9 shares); Blimie Perlstein (5%, 10 shares); Mordejai Salamon (17%, 34 shares); Menajem Salamon (35%, 70 shares); Tirtza Salamon (1%, 2 shares).

Original Real Estate Purchase Agreement:

The applicant submitted a copy of the original real property purchase agreement and original lease agreement, the terms of which were summarized below:

Date:	June 23, 2016
Seller:	Highland Nursing Home, Inc.
Buyer:	Highland Realty Co, LLC (proposed initially, rights later assigned)
Asset Transferred:	Real property located at 182 Highland Road, Massena, NY 13662
Purchase Price:	\$4,950,000
Payment of Purchase Price:	\$4,950,000 cash at closing

Original Lease Agreement and First Amendment

The applicant has submitted an executed original lease agreement and first amendment, the terms of which were summarized below:

Date:	August 10, 2016, and First Amended on December 4, 2018
Premises:	140-bed RHCf located at 182 Highland Road, Massena, NY 13662
Owner/Landlord:	Highland Realty Co., LLC (proposed initially, rights later assigned)
Lessee:	Highland Nursing Home, Inc.
Term:	30 years (amended to start with the closing of the Real Property Contract and terminate 30 years later)
Rent:	\$360,000 plus annual debt repayment (principal + interest estimated at \$501,866 per year), totaling approx. \$861,866 per year (\$71,822 per month).
Provisions:	Triple Net

On November 30, 2018, Highland Realty Co, LLC assigned its rights under the agreement for the sale of real property dated June 23, 2016, and the facility's lease agreement dated August 10, 2016, as amended December 4, 2018, to 182 Highland Road, LLC.

Assignment of Agreement for Sale of Real Property and Lease

The applicant has submitted an executed agreement for the assignment of the sale of real property agreement and the facility's lease agreement:

Date:	November 30, 2018
Assignor:	Highland Realty Co, LLC
Assignee:	182 Highland Road, LLC
Assignment:	Assignor assigns all its rights, title, and interest to and under the real property sale agreement and the lease.

The applicant confirms that the closing for the real property occurred on May 31, 2019. 182 Highland Road LLC leases the facility to Highland Nursing Home, Inc. for 30 years.

The purchase price of the real property was satisfied as follows:

Equity – 182 Highland Road LLC Members	\$742,500
Loan (M&T Bank, assumed outstanding realty loan debt, five years at 4% one-month Libor or 5.74% (as of December 18, 2019) and one 5-year extension at 5.50% plus one-month Libor, 25-year amortization)	<u>\$4,207,500</u>
Total	\$4,950,000

Second Amendment to Lease

The applicant has submitted an executed second amendment to the lease agreement, the terms of which are summarized below:

Date:	March 26, 2018 (executed March 6, 2019)
Lessor	182 Highland Road, LLC
Lessee:	Highland Nursing Home, Inc.
Term:	30 years
Rental:	\$360,000 plus annual debt repayment obligations (principal + interest estimated at \$501,866 per year), totaling approx. \$861,866 per year (\$71,822 per month).
Provisions:	Triple Net

Third Amendment to Lease

The applicant has submitted a draft third amendment to the lease agreement, the terms of which are summarized below:

Lessor	182 Highland Road, LLC
Lessee:	Highland Nursing Home, Inc.
Term:	30 years
Rental:	\$3,900,000-Base Rent _ If an amount greater than the Base Rent is required to permit Lessor to meet the payments required by or to otherwise comply with the terms of any Loan Documents secured by the Mortgage, the Base Rent shall be increased accordingly. (i) Base Rent 3% increase per year. (ii) Base Rent shall be increased every three years to the then fair market value as determined by a qualified appraisal company selected by the Lessor. (iii) For so long as the Leased Premises is encumbered by a HUD-insured mortgage (a "HUD Mortgage"), the Base Rent shall at all times be equal to at least 1.05 times the sum of the following amounts associated with the HUD Mortgage: annual principal and interest payments; annual mortgage insurance premium; annual deposit to reserve for replacement; annual property insurance; and annual property taxes. Any reduction to the minimum lease payment amount listed above must be explained, and HUD review and approval shall be required.
Provisions:	Triple Net

The lease arrangement is a non-arms-length agreement. The applicant has submitted an affidavit attesting there is overlapping but not identical ownership between the proposed owners of Highland Nursing Home, Inc., and the members of 182 Highland Road, LLC.

Two appraisals (Senior Care Valuation LLC and JLL) showed that the lease's market value ranged from \$3,543,548 to \$4,100,000 per year. The rent is within the range of the appraisals.

Capability and Feasibility

The proposed new shareholders will acquire 100% of Highland Nursing Home, Inc.'s corporate stock for \$1,863,461, to be funded with a 10-year Promissory Note at a 3% interest rate (original principal of \$2,050,000) between the current shareholders and 182 Highland Road, LLC. The \$1,863,461 Promissory note balance will be canceled upon the closing of the stock purchase agreement. 182 Highland Road LLC is the current property owner and has leased the facility to Highland Nursing Home, Inc. for a term of 30 years. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,391,876, based on two months of year one expenses. Funding will be provided from the entity's ongoing operations. BFA Attachment A presents the net worth summaries for the proposed members of Highland Nursing Home, Inc.'s corporate stock and indicates they have sufficient resources to meet equity requirements. BFA Attachment C presents Highland Nursing Home, Inc.'s pro forma balance sheet, which shows the entity will start with \$2,941,876 in equity.

The submitted budget projects a net income of \$348,229 and \$264,136 in the first and third years. Operating revenues are estimated to increase by approximately \$565,173 from the current year to year one. Overall expenses are projected to increase by \$209,470 by the first year following the approval of this project. The budget appears reasonable.

BFA Attachment D presents a Financial Summary of Highland Nursing Home, Inc. for 2020 through 2022. The facility had average positive working capital, average positive net assets, and average positive net income. BFA Attachment E presents their Internal Financials as of June 30, 2023, which shows \$28,416 in negative working capital, positive net assets, and a net income of \$319,795.

BFA Attachment F presents the proposed members' interest in New York Residential Health Care Facilities. On a combined basis, New York State-affiliated nursing homes had average positive working capital, average positive net assets, and average positive net income from 2020 through 2022. In 2022, each affiliated nursing home maintained positive working capital and positive net assets, and three of four affiliated nursing homes had minor losses.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BFA Attachment A	Highland Nursing Home, Inc. - Proposed Stockholders' Net Worth
BFA Attachment B	Current Owners of the Real Property
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	2020-2022 Financial Summary of Highland Nursing Home, Inc. and 2022 Certified Financial Statements
BFA Attachment E	Internal Financials Highland Nursing Home, Inc. June 30, 2023
BFA Attachment F	Proposed members' ownership interest in Affiliated RHCs



Project # 231011-E
Fairport SNF LLC d/b/a Fairport Skilled Nursing & Rehab

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: January 27, 2023

Executive Summary

Description

Fairport SNF LLC, a Delaware limited liability company authorized to conduct business in New York State, requests approval to be established as the new operator of Fairport Baptist Homes (FBH), a 142-bed, voluntary, Article 28 residential health care facility (RHCF) at 4646 Nine Mile Point Road, Fairport (Monroe County). Upon approval, the facility will be known as Fairport Skilled Nursing & Rehab.

On May 6, 2022, Fairport Baptist Homes (FBH), Fairport Baptist Homes Adult Care Facility, Inc. (FBH Adult Care), FBH Community Ministries (Community Ministries), and FBH Distinctive Living Communities, Inc. (Distinctive Living) entered Chapter 11 Bankruptcy in the United States District Court for the Western District of New York. On October 17, 2022, the Court filed an order approving 4646 Nine Mile Point Road, LLC's amended and restated Asset Purchase Agreement to acquire the operations and real property of the above four entities for \$14,300,000. An application to establish a new operator of the Adult Care Facility is concurrently under review by the Department's Bureau of Adult Care Facility & Assisted Living Licensure (Project #230048).

On January 10, 2023, 4646 Nine Mile Point Road, LLC entered an Assignment of Contract Agreement with Fairport SNF LLC for the operating assets associated with Fairport Baptist Homes (FBH). Fairport SNF LLC will lease the real property from 4646 Nine Mile Point Road, LLC.

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

Table with 2 columns: Member, Percentage. Row 1: Fairport Baptist Home, Inc d/b/a Fairport Baptist Homes, 100%

Table with 2 columns: Member, Percentage. Row 1: Eliezer Zelman*, 100%

*Managing member of the facility

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. Current occupancy, as of August 23, 2023, was 66.2% for the facility and 80.2% for Monroe County.

Program Summary

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

Financial Summary

The purchase price for the operations and real property of Fairport Baptist Homes, Fairport Baptist Adult Home Care Facility, Inc., FBH Community Ministries, and FBH Distinctive Living Communities, Inc. is \$14,300,000 as approved by the bankruptcy court. Certain members of 4646 Nine Mile Point Road, LLC will fund the \$14,300,000 from liquid resources.

The proposed budget is as follows:

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$17,937,200	\$18,503,700
Expenses:	<u>17,135,500</u>	<u>17,664,800</u>
Net Income:	\$801,700	\$838,900

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on Wednesday, January 11, 2023.

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

The Finger Lakes HSA made no recommendation for their review of this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of 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 an executed building lease acceptable to the Department of Health. [BFA]
4. Submission of one rent reasonable letter acceptable to the Department of Health. [BFA]
5. Submission of documentation of a final determination of the purchase price allocation. [BFA]

Approval conditional upon:

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

Council Action Date

November 16, 2023

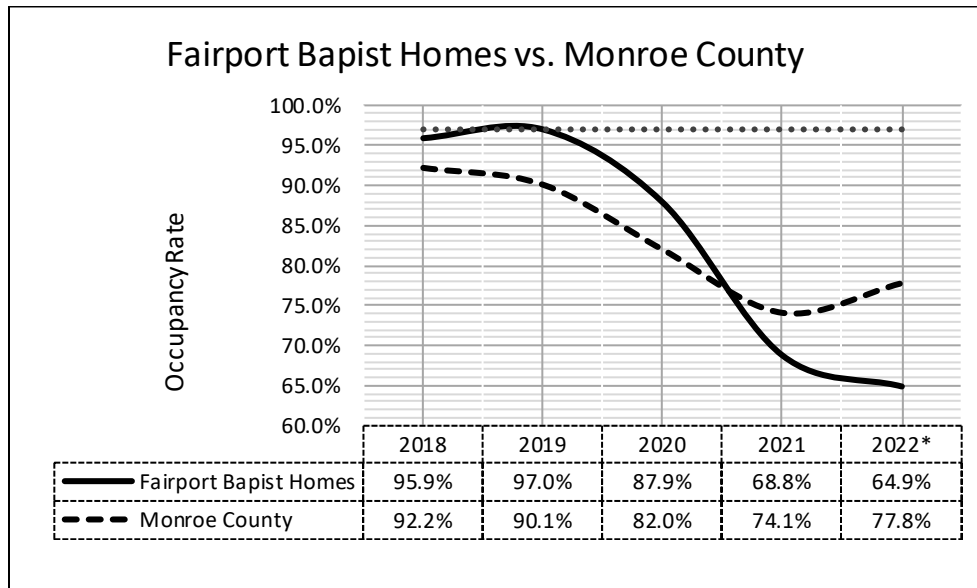
Need Analysis

Background and Analysis

The primary service area is Monroe County, which has a population projected to increase to 758,847 by 2028 based on Cornell Program of Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Monroe County	New York State
Total Population-2021 Estimate	757,332	20,114,745
Hispanic or Latino (of any race)	9.2%	19.2%
White (non-Hispanic)	69.8%	54.7%
Black or African American (non-Hispanic)	14.0%	13.9%
Asian (non-Hispanic)	3.6%	8.6%
Other (non-Hispanic)	3.4%	3.6%

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



*2022 data is self-reported and not certified

As of August 23, 2023, occupancy was 66.2% for the facility and 80.2% for Monroe County. The current operators of Fairport Baptist Homes have filed for relief under Chapter 11 of the U.S. Bankruptcy law.

The table below shows the CMS Rating and the utilization of the six closest RCHFs to Fairport Baptist Homes.

Facility Name	CMS Overall Rating As of 8/2023	Number of Beds	Distance from other RCHFs Distance/Time	Occupancy			
				2019	2020	2021	2022
Fairport Baptist	2	142	0 miles/0 mins	97.0%	87.9%	68.8%	64.9%
Aaron Manor	4	140	2.0 miles/6 mins	92.5%	89.6%	80.3%	86.9%
St John's Penfield	3	20	2.3 miles/5 mins	96.5%	90.1%	90.6%	95.6%
Crest Manor	1	80	3.1 miles/9 mins	92.5%	90.3%	85.1%	94.2%
Penfield Place	5	48	4.8 miles/11 mins	87.9%	83.4%	91.4%	88.4%
Highlands Living	2	120	4.9 miles/11 mins	94.6%	91.9%	83.2%	86.6%
Friendly Home	5	200	5.7 miles/12 mins	96.1%	85.0%	76.7%	82.1%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Fairport Baptist	1.1908	0.9619	0.9478	0.7943	1.065	0.858
Aaron Manor	1.2547	0.9705	1.1231	1.0077	1.213	1.057
St John's Penfield	0.8169	0.804	0.7874	0.79	0.991	0.943
Crest Manor	1.1088	0.9738	1.1913	1.1451	1.208	1.139
Penfield Place	1.1292	1.0251	1.2643	1.2336	1.266	1.099
Highlands Living	1.1921	0.9774	1.0286	0.9659	1.065	1.001
Friendly Home	1.0526	0.9421	0.9932	0.9083	1.057	0.965

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- The number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was below the threshold of 75% of the Monroe County rate for the years 2019 through 2021.

Medicaid Access	2019	2020	2021
Monroe County Total	15.0%	17.6%	19.1%
Monroe Threshold Value	11.2%	13.2%	14.3%
Fairport Baptist Homes	4.8%	8.2%	1.4%

Conclusion

There will be no changes to beds or services as a result of this application.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Fairport Baptist Homes	Fairport Skilled Nursing & Rehab
Address	4646 Nine Mile Point Road Fairport, NY 14450	Same
RHCF Capacity	142 beds	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-Profit Corporation	Proprietary
Operator	Fairport Baptist Home	Fairport SNF LLC <u>Member:</u> Eliezer J. Zelman (Jay) 100%

Upon approval of this application, Fairport SNF LLC will enter into an administrative/consulting services agreement with David Heinemann of Advanced Health, Inc. David Heinemann is the sole shareholder of the ASA/consulting provider. The provider of ASA/consulting services is via an arm's length agreement. The ASA/consulting provider agreement consists of financial, back-office, and non-clinical services, including but not limited to billing, collections, accounting, purchasing, administrative, and consulting services.

Character and Competence

Eliezer J. (Jay) Zelman lists concurrent employment as Operator of the following facilities: Buena Vida Rehabilitation and Nursing Center, Brooklyn, NY; Regal Heights Rehabilitation and Nursing Center, Queens, NY; New York Congregational Nursing Center, Brooklyn, NY; and Achieve Rehab and Nursing Facility, Liberty, NY, as well as Founding Partner of REQQER.com, a web-based maintenance management system for skilled nursing facilities. Previous employment was listed as CEO/Operator of Schervier Nursing Care Center, Riverdale, NY, Partner/VP LTC Division of Compass Home Dialysis Center, Philadelphia, PA, Director of Operations of Global Healthcare Services Group, Howell, NJ, a group providing operational oversight of NYS and PA SNFs, and Administrator of Record for Achieve Rehab and Nursing Facility. Eliezer was a Licensed Nursing Home Administrator in both New York and New Jersey, but those licenses have expired. Eliezer holds a master's degree in Administration & Supervision, Ed. from Fordham University, and discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Achieve Rehab and Nursing Facility (9.99%)	09/2007 to present
Buena Vida Rehabilitation and Nursing Center (0.10%)	05/2020 to present
New York Congregational Nursing Center (50.00%)	07/2021 to present
Regal Heights Rehabilitation and Health Care Center (49.50%)	07/2020 to present

End-Dated Facilities

Schervier Nursing Care Center [NY] (10.00%)	07/2017 to 03/2020
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Quality Review

The proposed applicant has been evaluated, in part, on the distribution of CMS Star ratings for their portfolio. For the proposed owner, the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Eliezer J. Zelman	4	3	66.7%	1	0%

*Duration of ownership as of 11/16/2023
Data date: 09/2023

New York. The proposed owner's portfolio includes ownership in four New York facilities. Two of the New York facilities in the ownership portfolio have a CMS overall quality rating of three stars (average). Two of the New York facilities in the ownership portfolio have a CMS overall quality rating of two stars (below average) – Buena Vida Rehabilitation and Nursing Center and New York Congregational Nursing Center. To improve the quality at the two-star facilities, the applicant indicated the following:

Buena Vida currently has three stars in health inspections. The one-star in staffing is causing the facility to land with a two-star overall rating. The facility has started an aggressive approach toward hiring additional staff, with a focus on RNs. Buena Vida now has a dedicated recruiting team. The objective of the additional staffing is to provide exceptional care, which will help across the board. The star ratings will go up with the additional help, both on staffing and then on the health inspections as well. It may take a few quarters until all the data makes it to the nursing home compare website and the actual stars are reflected there.

New York Congregational Nursing Center. Please note the following pertinent points as to why the CMS Star Ratings are a two:

- Issued G-tag (G) that was from a complaint survey prior to the start of ownership, which is still part of the overall CMS Star calculation.
- The loss of a staffing payment-based journal audit is freezing the current staffing rating, which the operators expect to end this quarter, and there is a projection that staffing will increase to two stars (it is currently at one star), which is believed that it will lead to an overall three-star facility.
- The facility had a full survey about 3 weeks ago, and it has been reported that they only received 12 low-level deficiencies (level D and E citations) between health and life safety measures. There were no IJs and/or immediate harm.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Fairport Baptist Homes	Subject Facility	**	**	****	**
Achieve Rehab and Nursing Facility	Current	***	***	***	**
	09/2007**	***	**	***	****
Buena Vida Rehabilitation and Nursing Center	Current	**	***	****	*
	05/2020	*****	****	*****	***
New York Congregational Nursing Center	Current	**	**	*****	*
	07/2021	***	**	*****	**
Regal Heights Rehabilitation and Health Care Center	Current	***	***	****	**
	07/2020	*****	*****	*****	***

**Earliest data as of 01/2009

End-Dated Ownership					
New York					
Schervier Nursing Care Center	03/2020	*****	****	*****	**
	07/2017	*****	****	*****	***

Data date: 09/2023

Enforcement History

New York

A review of the operations of Achieve Rehab and Nursing Facility for the time indicated above reveals the following:

- The facility was assessed a federal CMP of \$650 on 05/10/2021 for failure to report COVID-19 data.

A review of the operations of Buena Vida Rehabilitation and Nursing Center for the time indicated above reveals the following:

- The facility was assessed a federal CMP of \$1,316 on 02/28/2022 and \$987 on 02/21/2022 for failure to report COVID-19 data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-052 for surveillance findings on 12/21/2021. Deficiencies were found under 10 NYCRR 415.19(a) Infection Control. The facility failed to ensure that infection control practices and procedures were maintained. Specifically, oxygen tubing and catheter tubing were observed touching the floor on four occasions. In addition, staff were observed not sanitizing residents' hands prior to serving meals.
- The facility was assessed a federal CMP of \$5,000 on 12/21/2021 for failure to provide and implement an infection prevention and control program.
- The facility was assessed a federal CMP of \$650 on 02/15/2021 for failure to report COVID-19 data.

A review of the operations of the New York Congregational Nursing Center for the time indicated above reveals the following:

- The facility was assessed a federal CMP of \$2,113 on 11/07/2022 and \$4,226 on 10/17/2022. Per the applicant: *The civil monetary penalties are for failing to report data to the Centers for Disease Control with COVID-19 data reporting. This is concurrent with the period when a new Administrator of Record commenced at the facility and was unable to have access to the reporting portal.*
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-109 for surveillance findings on 01/03/2022. Deficiencies were found under Executive Order 415.19(a) Infection Control. The facility failed to ensure that infection control practices and procedures were maintained. Specifically, oxygen tubing was observed touching the floor on three occasions, a staff member was observed entering a room with signage of contact droplet precautions without wearing the appropriate Personal Protective Equipment, and there was no water management plan for Legionella with the required components, including but not limited to a facility-specific environmental risk assessment, a site-specific water management plan, or a sampling plan.
- The facility was assessed a federal CMP of \$655 on 09/06/2021 for failure to report COVID-19 data.

A review of the operations of Regal Heights Rehabilitation and Health Care Center for the time indicated above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-22-103 for surveillance findings on 04/22/2022. Deficiencies were found under 10 NYCRR 415.19(a) (1-3) & (b)(1) Infection Control. The facility did not ensure infection control practices were maintained to prevent the development and transmission of COVID-19 infection. Specifically, the facility failed to put two exposed residents on contact isolation following exposure to COVID-19.
- The facility was assessed a federal CMP of \$9,750 on 04/22/2022 for infection control failures.
- The facility was assessed federal CMPs of \$1,988 on 02/28/2022, \$1,657 on 02/21/2022, \$1,325 on 02/14/2022, \$994 on 02/07/2022 and \$663 on 01/31/2022 for failure to report COVID-19 data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-231 for surveillance findings on 09/10/2021. Deficiencies were found under 10 NYCRR 415.19(a) Infection Control. The facility did not ensure infection control practices and procedures were maintained to provide a safe and sanitary environment to help prevent the development and transmission of communicable diseases and

infections. Specifically, an RN was observed using a Blood Pressure cuff for multiple residents without sanitizing the equipment in between the residents.

- The facility was assessed a federal CMP of \$5,000 on 09/01/2021 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-109 for surveillance findings on 12/30/2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) & (2) Infection Control. The facility failed to maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the transmission of COVID-19. Specifically, the facility failed to appropriately control and prevent the transmission of COVID-19 when it failed to place units exposed to COVID-19-positive staff on contact and droplet precautions.

A review of the operations of Schervier Nursing Care Center for the time indicated above revealed no enforcements.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year, 2022, and the first and third-year operating budgets after the change in ownership in 2024 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>2022</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$190.10	\$3,677,894	\$218.75	\$7,128,813	\$218.75	\$7,128,813
Medicaid MC	\$74.84	31,358	\$218.74	19,687	\$218.74	19,687
Medicare FFS	\$799.32	756,957	\$839.91	2,510,500	\$835.55	3,546,921
Medicare MC	\$796.13	1,230,020	\$756.40	1,542,300	\$775.37	1,580,979
Commercial FFS	\$545.00	10,900	\$546.37	3,433,400	\$560.01	3,519,100
Private	\$520.610	5,735,081	\$525.35	3,301,300	\$538.39	2,707,000
Other Operating*		1,866,050		1,200		1,200
Non-Operating**		<u>2,577,439</u>		<u>0</u>		<u>0</u>
Total Revenues		\$15,885,699		\$17,937,200		\$18,503,700
 <u>Expenses:</u>						
Operating	\$425.77	\$14,175,673	\$300.42	\$15,103,500	\$302.54	\$15,210,400
Capital	<u>\$32.69</u>	<u>1,088,329</u>	<u>40.42</u>	<u>2,032,000</u>	<u>\$48.82</u>	<u>2,454,400</u>
	\$458.46	\$15,264,002	\$340.84	\$17,135,500	\$351.36	\$17,664,800
 Net Income		<u>\$621,697</u>		<u>\$801,700</u>		<u>\$838,900</u>

Patient Days	33,294	50,275	50,275
Utilization %	64.24%	97.00%	97.00%

* COVID-19 Provider Relief Funds \$1,315,205; Rental Income \$489,600; Cafeteria \$50,581, Other \$10,664

** Change in Funded Status of Pensions \$1,898,166 and Miscellaneous \$679,273

The following is noted concerning the submitted RHCF operating budget:

- Medicaid revenue is based on the reimbursement methodology under statewide pricing. Medicare rates are projected based on the Medicare Prospective Payment System in effect for 2023. Private and Other rates are projected based on similar facilities in the same geographical area plus a 2.5% per annum increase.
- Expenses are based on historical data adjusted by 2% for inflation, utilization, and New York State staffing regulations.
 - The projected percentage of direct care staffing costs to projected facility revenues is 40.94% in Year One and 40.01% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 76.96% in Year One and 74.34% in Year Three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 4.61% in Year One and 4.68% in Year Three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- RHCF utilization under the current operator was 97.02% in 2019, 87.89% in 2020, 68.84% in 2021, 64.24% in 2022, and 63.4% on September 20, 2023, under self-reporting. The applicant plans to improve occupancy by:
 - Cultivating relationships with area doctors, hospitals, and others in the surrounding communities.
 - Implementing a new marketing program and having a dedicated field employee and admissions team working with local hospitals and physician groups to coordinate the continuation of patient care.
 - Evaluating options for new programs that will benefit the facility, its residents, and the community.

Utilization by the payor for the first and third years after the change in ownership is summarized below:

Payor	Current Year 2022		Year One 2024		Year Three 2026	
	Days	%	Days	%	Days	%
Medicaid FFS	19,347	58.11%	32,589	64.81%	32,589	64.82%
Medicaid MC	419	1.26%	90	0.18%	90	0.18%
Medicare FFS	947	2.84%	2,989	5.95%	4,245	8.44%
Medicare MC	1,545	4.64%	2,039	4.06%	2,039	4.06%
Commercial FFS	20	0.06%	6,284	12.50%	6,284	12.50%
Private Pay	<u>11,016</u>	<u>33.09%</u>	<u>6,284</u>	<u>12.50%</u>	<u>5,028</u>	<u>10.00</u>
Total	33,294	100%	50,275	100%	50,275	100%

The facility's Medicaid admissions of 8.2% in 2020 and 1.4% in 2021 were below Monroe County's 75% threshold rate of 13.2% and 14.3% in 2020 and 2021.

The RHCf breakeven utilization is projected at 92.67% in the first year.

Purchase Agreement (PA)

The applicant submitted an executed APA to acquire the personal and real properties associated with the bankrupt facilities. The sale related to the RHCf will become effective upon PHHPC approval. The terms are summarized below:

Date:	October 11, 2022
Seller/Debtors:	Fairport Baptist Homes FBH () Fairport Baptist Homes Adult Care Facility, Inc. (FBH Adult Care) FBH Community Ministries (Community Ministries) FBH Distinctive Living Communities, Inc. (Distinctive Living)
Buyer:	4646 Nine Mile Point Road, LLC
Asset Acquired:	Rights, title, and interest in and to the facilities' real estate, business, and operations as approved by the Bankruptcy Court's order. Includes Leases, tangible or intangible property, contracts, purchased receivables, inventory, equipment, licenses, permits, intellectual property, computer applications, phone numbers, insurance proceeds, warranties, deposits, and goodwill. Assignments - Medicare Provider Agreements and Medicaid Provider Agreements.
Excluded Assets:	Cash equivalents, minute books, contracts, benefit plans, cause of action before closing, insurance refunds and claims, and deposits unrelated to leases.
Assumption of Liabilities:	Cure obligations, liabilities, and obligations arising concerning the operation of the Facility after the Closing Date;
Excluded Liabilities:	Free and clear of any liabilities, Liens, Claims against, or Obligations of Sellers before closing. (Section 2.5c -will assume liability for Medicare Provider Agreements and Medicaid Provider Agreements as required by applicable regulation, including but not limited to 42 CRF 489.18)
Purchase Price	\$14,300,000
Allocation of Purchase Price:	FBH – Operations and Real Property – hasn't been determined FBH Adult Care – Operations and Real Property- hasn't been determined Community Ministries – Operations and Real Property- hasn't been determined Distinctive Living – Operations and Real Property- hasn't been determined
Payment of the Purchase Price	\$ 439,500 deposit at signing \$ 250,000 deposit into escrow at closing \$13,610,500 due at closing

The purchase price for the personal property and real property of \$14,300,000 will be satisfied through equity of 4646 Nine Mile Point Road, LLC members.

BFA Attachment A-2 presents the net worth summary for 4646 Nine Mile Point Road, LLC members, revealing sufficient resources to fund the purchase price. Teddy Lichtschein, Grantor of Gamfal, LLC, and Eliezer Scheiner, Grantor of Scheiner Holdings, LLC, have each provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in 4646 Nine Mile Point Road, LLC.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of June 2, 2023, the facility had \$365,582 outstanding in Medicaid liabilities, which declined to \$315,850 as of October 10, 2023. The Medicaid liabilities are included in the pro forma balance sheet.

Assignment of Contract

The applicant has submitted an executed assignment agreement transferring the RHCF's operations, as summarized below:

Date:	January 10, 2023
Assignor:	4646 Nine Mile Point Road, LLC
Assignee:	Fairport SNF, LLC
Assigned Rights:	All the assignor's rights, title, and interest in and to (a) All permits, licenses, approvals, or authorizations to operate the 142-bed RHCF previously by Fairport Baptist Homes. Any contracts with governmental regulatory entities relating to the operations of the RHCF. Any receivables purchased and all patient records related to the RHCF.
Consideration	Allocation unknown currently

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	A 142-bed, 176,695 sq. ft. RHCF, located at 4646 Mile Point Road, Fairport, NY 14450.
Landlord/Lessor:	4646 Nine Mile Point Road, LLC
Lessee:	Fairport SNF, LLC
Term:	Ten years
Rent:	\$1,400,000 - 1 st Yr.; \$1,600,000 – 2 nd Yr.; \$1,800,000 -3 rd yr.; \$2,000,000 – 4 th Yr. and then 3% annual increase. (Sq. Ft \$7.93, \$9.06, \$10.19, and \$11.32 in the 4 th yr.)
Provisions:	Triple Net

The lease arrangement is a non-arms-length agreement. The applicant affirms that the solo member has other pre-existing business relations. The applicant has submitted one letter from a New York Licensed Real Estate Broker attesting that the lease cost per square foot is at fair market value, which is a range that covers the first four years.

Consulting Services Agreement

The applicant has provided an executed Consulting Services Agreement, with terms summarized below:

Date:	September 1, 2023
Contractor:	Advance Health, Inc.
Facility:	Fairport SNF, LLC d/b/a Fairport Skilled Nursing & Rehab
Consulting and Advisory Services:	Consulting & advisory services include financial and back-office services, administrative services, and clinical consulting.
Term:	One One-year term and automatically renews for one-year terms
Fee:	\$492,000 annually

Fairport SNF, LLC has submitted an executed attestation stating that the applicant understands and acknowledges that powers must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

The Bankruptcy Court approved 4646 Nine Mile Point Road, LLC's \$14,300,000 purchase price for the operations and real property of the following: Fairport Baptist Homes, Fairport Baptist Adult Home Care Facility, Inc., FBH Community Ministries, and FBH Distinctive Living Communities, Inc. Certain members of 4646 Nine Mile Point Road, LLC will fund the \$14,300,000 from liquid resources. Allocation of the purchase price has not been determined. Upon the PHHPC's approval of the change in ownership, the bankruptcy counsel, HUD's current mortgage lender, and the applicant will address the possibility of assuming the existing mortgage. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,855,917 based on two months of first-year expenses to be funded by the member's equity. BFA Attachment A-1 presents the net worth summary for Fairport SNF, LLC member, which indicates sufficient liquid resources to meet the equity requirement.

The submitted budget projects a first- and third-year profit of \$801,700 and \$838,900. Overall revenues are expected to increase by \$2,051,501 due to increased occupancy. Overall expenses are expected to increase by \$1,871,498 due to a \$927,827 increase in operating expenses and a \$943,671 increase in capital expenses (primarily rent). The increase in operating expenses includes salaries of \$1,253,932, Medical Supplies of \$207,814, and purchase of services of \$390,291, offset by \$924,210 in various costs. Employee benefits went from 32.25% to 22%. BFA Attachment B presents Fairport SNF LLC's pro forma balance sheet, which shows the entity will start with \$2,540,418 in members' equity. The budget appears reasonable.

BFA Attachment C presents the Financial Summary of Fairport Baptist Homes for the period 2020 through 2022. The RHCF reported negative net assets, positive working capital, and positive earnings each year.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCFs and their financial summaries. Of the four nursing homes, one was acquired in 2007, two in the middle of 2020, and one in July of 2021. The facilities had a combined negative working capital position, negative net asset position, and positive net income of \$728,833.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A-1	Net Worth of Proposed Members of Fairport SNF LLC
BFA Attachment A-2	Net Worth for members of 4646 Nine Mile Point Road, LLC
BFA Attachment B	Pro Forma Balance Sheet, Fairport SNF LLC
BFA Attachment C	Financial Summary Fairport Baptist Homes and Fairport Baptist Homes Caring Ministries and Affiliates 2020–2021 certified financial statement.
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCFs and Financial Summary
BFA Attachment E	Members and Chart of 4646 Nine Mile Point Road, LLC



Project # 231044-E
Sunset SNF Operations LLC d/b/a
Sunset Lake Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment
County: Sullivan
Acknowledged: February 21, 2023

Executive Summary

Description

Sunset SNF Operations LLC, a Delaware limited liability company authorized to conduct business in New York State, requests approval to be established as the new operator of Sullivan County Adult Care Center (SCACC). SCACC is a 146-bed, not-for-profit corporation, Article 28 residential health care facility (RHCF) with a 17-registrant licensed Adult Day Care Health Program (ADCHP). The RHCF and ADCHP programs occupy leased space at 256 Sunset Lake Road, Liberty (Sullivan County). Upon approval, the facility will be named Sunset Lake Center for Rehabilitation and Nursing.

On January 9, 2023, the County of Sullivan entered into a Facility Transition Agreement (FTA) with Sunset SNF Operations, LLC, for the sale and acquisition of the operations associated with the RHCF and ADCHP programs for the assumption of certain liabilities estimated at approximately \$1,000,000. The applicant will lease the premises from Sunset Lake Local Development Corporation (a not-for-profit entity unrelated to the applicant).

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

Table with 1 column: Current Operator, County of Sullivan, A Municipal Corporation

Table with 2 columns: Proposed Operator (Sunset SNF Operations, LLC), Members (Sunset Operations Holdings, LLC 100%, Esther Klein 95%, Kathryn Perez 5%)

OALTC Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this application. Current occupancy, as of September 6, 2023, was 74.0% for the facility and 86.8% for Sullivan County.

Program Summary
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
The purchase price for the operations is the assumption of certain liabilities estimated to be approximately \$1 million, to be paid during the ordinary course of business. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$15,981,985 vs \$16,140,457), Expenses (15,923,035 vs 15,993,692), Net Income (\$58,950 vs \$146,765)

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on January 1, 2023.

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of an executed Consulting Agreement acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

Approval conditional upon:

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

Council Action Date
November 16, 2023

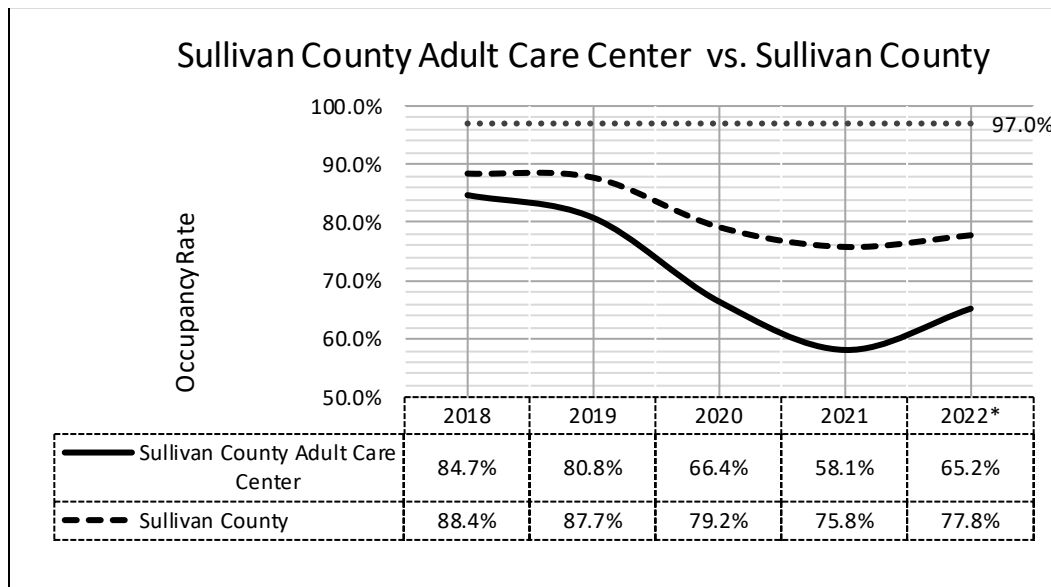
Need Analysis

Background and Analysis

The primary service area is Sullivan County, which has a population that is projected to decrease to 74,776 by 2028 based on Cornell Program of Applied Demographics estimates. Based upon the 2021 U.S. Census Population Estimates from the American Community Survey, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Sullivan County	New York State
Total Population (2021 Estimate)	78,230	20,114,745
Hispanic or Latino (of any race)	16.6%	19.2%
White (non-Hispanic)	70.2%	54.7%
Black or African American (non-Hispanic)	8.0%	13.9%
Asian (non-Hispanic)	1.8%	8.6%
Other (non-Hispanic)	3.4%	3.6%

Source: American Community Survey 5-year Estimates Data Profiles



*2022 data is self-reported and not certified

As of September 6, 2023, occupancy was 74.0% for the facility and 86.8% for Sullivan County.

The applicant states that the low historical occupancy has been due to the fact that the facility has been voluntarily limiting the number of new resident admissions in order to comply with minimum staffing ratios and to ensure that the facility's current residents receive the best care possible. The facility has experienced difficulties with hiring and retaining qualified nursing staff over the past few years.

The table below shows the CMS Rating and the utilization of the six closest RCHFs to Sullivan County Adult Care Center.

Facility Name	CMS Overall Rating	Beds	Distance from other RCHFs Miles/Distance	Occupancy			
	As of 6/2023			2019	2020	2021	2022
Sullivan County Adult Care Center	1	146	0 miles/0 mins	80.8%	66.4%	58.1%	65.2%
Achieve Rehab	3	140	3.6miles/7 mins	91.5%	86.0%	90.9%	85.7%
Roscoe Rehab	4	85	20.8 miles/25 mins	94.7%	84.7%	81.2%	86.2%
St Joseph's Place (Orange)	5	42	36.0 miles/44 mins	93.6%	70.9%	69.7%	59.2%
Highland Rehab (Orange)	1	98	38.3 miles/41 mins	89.3%	92.6%	91.1%	92.0%
Middletown Park (Orange)	5	230	38.6 miles/55 mins	86.8%	81.5%	84.6%	83.2%
Mountainside Care (Delaware)	5	82	42.7 miles/57 mins	95.0%	96.0%	82.0%	65.4%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Sullivan County Adult Care Center	1.126	0.8282	1.0356	0.9206	1.029	0.923
Achieve Rehab	1.4137	1.0246	1.3333	1.345	1.311	1.156
Roscoe Rehab	1.261	1.2005	1.2545	1.3125	1.161	1.328
St Joseph's Place (Orange)	1.3164	0.8761	1.178	0.887	1.098	0.884
Highland Rehab (Orange)	1.5336	1.2385	1.4411	1.307	1.469	1.36
Middletown Park (Orange)	1.5242	1.2342	1.3783	1.2299	1.458	1.32
Mountainside Care (Delaware)	0.9741	0.8509	0.9163	0.9125	0.898	0.885

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- The number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The Sullivan County Adult Care Center Medicaid admissions rate was significantly above the threshold of 75% of the Sullivan County rate for the years 2019 through 2021.

Medicaid Access	2019	2020	2021
Sullivan County Total	33.9%	38.5%	27.5%
<i>Sullivan Threshold Value</i>	<i>25.4%</i>	<i>28.9%</i>	<i>20.6%</i>
Sullivan County Adult Care	57.1%	90.8%	65.0%

Conclusion

There will be no changes to beds or services as a result of this application.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Sullivan County Adult Care Center	Sunset Lake Center for Rehabilitation and Nursing
Address	256 Sunset Lake Road Liberty, NY 12754	Same
RHCF Capacity	146 beds	Same
ADHCP Capacity	17	Same
Type of Operator	Municipal Corporation (County)	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Sullivan	Sunset SNF Operations, LLC <u>Member:</u> Sunset SNF Operations Holdings, LLC 100% <u>Members:</u> <i>Esther Klein</i> 95% <i>Kathryn Perez</i> 5%

This application indicates that the proposed buyer will enter into a new CASA (consulting and services agreement) with Sunset Lakes Consulting LLC. The existing CASA between the County of Sullivan and Sunset Lakes Consulting will terminate once the ownership transaction described in this application is effectuated. There is a relationship between the parties in that the sole member of Sunset Lakes Consulting LLC is Esther Klein, who is also a 95% member of Sunset SNF Operations LLC, the proposed operating entity.

Upon approval of this Application, Sunset Lake Local Development Corporation (a not-for-profit entity unrelated to the applicant) will lease the RHCF to Sunset Operations LLC for a term of 20 years.

Character and Competence

Esther Klein discloses employment as a Teacher's Coach at Catapult Learning Center, LLC, located in Camden, New Jersey, and is also self-employed as a skilled nursing facility Operator since October 2018. Esther holds a high school diploma from Yeshiva Kehilath Yakov and discloses the following ownership interests:

New York Nursing Homes

Ten Broeck Center for Rehabilitation & Nursing (27.5%)	10/2018 to present
Westhampton Care Center (3%)	01/2018 to present
The New Jewish Home, Sarah Neuman (95%)	Pending

Out-of-State Nursing Homes

Valencia Hills Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Seven Hills Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Springs at Boca Ciega Bay (FL) (11.25%)	02/2022 to present
Springs at Lake Pointe Woods (FL) (11.25%)	02/2022 to present
Surrey Place Healthcare and Rehabilitation (FL) (11.25%)	02/2022 to present
Diamond Ridge Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Madison Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Tampa Lakes Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Scott Lake Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present

End-Dated Nursing Homes

Abbey Woods Center for Rehabilitation and Healing (MO) (30%)

04/2017 to 06/2019

Kathryn Perez lists employment as Regional Director of Operations at Infinite Care, a skilled nursing consulting company located in Lakewood, NJ, and was previously employed as the administrator at Ten Broeck Commons in Lake Katrine, New York. Kathryn holds a bachelor’s degree in Education/Recreation Therapy from SUNY Cortland and is a Licensed Nursing Home Administrator in New York with a license in good standing. Kathryn is also a Certified Therapeutic Recreation Specialist with an active certification through the National Council for Therapeutic Recreation Certification and discloses the following health facility ownership interests.

New York Nursing Homes

The New Jewish Home, Sarah Neuman (5%)

Pending

End-Dated Nursing Homes

Evergreen Commons (NY) (5%)

05/2008 to 04/2016

Ten Broeck Center for Rehabilitation & Nursing (NY) (8.5%)

09/2004 to 09/2018

Quality Review

The proposed applicant has been evaluated, in part, on the distribution of CMS Star ratings for their portfolio. For the proposed owner, the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
		Duration of Ownership*			
		< 48 Months		48 months or more	
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Esther Klein	11	9	22%	2	0%
Kathryn Perez	0	N/A	N/A	N/A	N/A

*Duration of ownership as of 11/16/2023

Data date: 09/2023

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

Florida: The proposed owner’s portfolio includes ownership in nine Florida facilities. Seven of the Florida facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facilities, Diamond Ridge Health and Rehabilitation Center and Scott Lake Health and Rehabilitation Center, have a CMS overall quality rating of below average or lower. To improve the overall quality rating at Diamond Ridge Health and Rehabilitation Center and Scott Lake Health and Rehabilitation Center, the applicant indicated the following:

Diamond Ridge Health and Rehabilitation Center has two stars overall and three stars for staffing. Regarding the overall rating of two stars, this was the result of an Immediate Jeopardy (IJ) violation received by the facility during an annual survey that was conducted from October 21-24, 2019. It is important to note that this IJ was received by the facility prior to Ms. Klein’s affiliation. The IJ related to a three-minute delay in staff providing Cardio-Pulmonary Resuscitation (CPR) to a resident who was having a heart attack. The resident subsequently passed away. This IJ was subsequently removed on October 25, 2019, and the following actions have been implemented by the facility:

- *Regular audits are conducted to verify that all licensed nurses have current CPR certification;*
- *Re-education was provided to nursing staffing by the facility’s Staff Development Office regarding the proper procedures to utilize when responding to emergency care issues;*
- *Mock drills are performed on a regular basis to assess staff response to emergency care; and*

- *Random weekly audits are conducted by the Director of Nursing to ensure the proper procedures for emergency care are performed. The results of these audits are presented to the Quality Assurance and Improvement Committee on a monthly basis.*

Diamond Ridge Health and Rehabilitation Center is waiting for its next annual survey to take place. Once the survey has been conducted, the facility expects to show three stars in the Overall category.

Scott Lake Health and Rehabilitation Center received three Immediate Jeopardy tags on May 19, 2023, all of which were corrected on June 19, 2023. A Civil Monetary Penalty (CMP) in the amount of \$15,592 relating to these tags was paid by the facility on August 8, 2023.

Since then, the facility Administrator has been replaced. Additional support has been added from the facility's clinical consultant team. The clinical consultant team continues to provide daily oversight to improve facility practices related to policy, procedures, and programming. This oversight includes education of staff, auditing of processes, and observation of the care being provided to facility residents. Further, to improve the facility's quality measures, the facility is in the process of hiring a Resident Services Director who will have the education and experience to support the facility's initiative to increase the quality of care being provided to its residents. Finally, the facility will increase its Registered Nurse hours by filling its vacant unit manager position with an experienced Registered Nurse. The facility is optimistic that these initiatives will lead to an increase in the Overall star rating of the facility.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Sullivan County Adult Care Center	Subject Facility	*	*	***	**
Ten Broeck Center for Rehabilitation & Nursing	Current	****	***	*****	**
	10/2018	*****	****	*****	**
Westhampton Care Center	Current	****	***	*****	**
	1/2018	****	***	*****	***
Florida					
Valencia Hills Health and Rehabilitation Center	Current	***	***	***	***
	2/2022	*	**	****	*
Seven Hills Health and Rehabilitation Center	Current	****	****	****	***
	2/2022	****	***	**	****
Springs at Boca Ciega Bay	Current	****	***	*****	****
	2/2022	****	***	***	****
Springs at Lake Pointe Woods	Current	*****	****	*****	****
	2/2022	*****	*****	*****	***
Surrey Place Healthcare and Rehabilitation	Current	*****	*****	*****	****
	2/2022	*****	****	*****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Diamond Ridge Health and Rehabilitation Center	Current	**	*	*****	***
	2/2022	**	*	*****	***
Madison Health and Rehabilitation Center	Current	*****	*****	***	****
	2/2022	*****	*****	***	****
Tampa Lakes Health and Rehabilitation Center	Current	***	***	****	***
	2/2022	***	**	****	*****
Scott Lake Health and Rehabilitation Center	Current	*	*	****	***
	2/2022	****	***	****	****

Data date: 9/2023

End Dated Ownership					
New York					
Ten Broeck Center for Rehabilitation & Nursing	9/2018	*****	****	*****	**
	9/2004*	*****	*****	***	**
Evergreen Commons	4/2016	*	*	****	**
	5/2008*	*	*	**	*
Missouri					
Abbey Woods Center for Rehabilitation and Healing	6/2019	**	*	*****	**
	4/2017	***	**	**	****

Data as of 01/2009

Enforcement History

New York

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

- The facility was fined \$14,000.00 pursuant to Stipulation and Order NH-22-116 for surveillance findings on 1/18/2022. Deficiencies were found under 415.19(a)(1)(2) Infection Control – PPE: Facility staff were observed exiting and entering the rooms of residents on droplet precautions without doffing and donning PPE and 415.12 (h)(2) Quality of Care: A resident, who required total dependence of two persons for bathing, sustained a fall with a head injury when care to the resident was provided without assistance. A federal CMP in the amount of \$11,435.00 was also assessed for surveillance findings on 1/18/2022.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-19-003 for surveillance findings on 9/10/2018. Deficiencies were found under 415.4(b) abuse, verbal, sexual, physical, and mental, corporal punishment, and involuntary seclusion. A federal CMP in the amount of \$7,036.25 was also assessed for surveillance findings on 9/10/2018.

A review of the operations of Ten Broeck Center for Rehabilitation & Nursing for the time period indicated above reveals no enforcements.

A review of the operations of Evergreen Commons for the time period indicated above reveals the following:

- The facility was fined \$12,000.00 pursuant to Stipulation and Order NH-16-150 for surveillance findings on 9/8/2014. Deficiencies were found under 415.11(c)(3)(ii) Resident assessment services must meet professional standards and 415.12 Quality of care highest practicable potential.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-16-064 for surveillance findings on 5/13/2014. Deficiencies were found under 415.12(h)(1) Quality of Care accident-free environment.

Florida

A review of the operations of Valencia Hills Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Seven Hills Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Springs at Boca Ciega Bay for the time period indicated above reveals no enforcements.

A review of the operations of Springs at Lake Pointe Woods for the time period indicated above reveals no enforcements.

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

A review of the operations of Diamond Ridge Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

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

A review of the operations of Tampa Lakes Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Scott Lake Health and Rehabilitation Center for the time period indicated above reveals the following.

- The facility was assessed a CMP of \$15,593.00 based on surveillance findings on 5/19/2023 under F609 for failure to timely report suspected abuse, neglect, or theft and report the results of the investigation to proper authorities, F689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents, and F757 for failure to ensure each resident's drug regimen must be free from unnecessary drugs.

Missouri

Information provided by the State of Missouri for Abbey Woods during the time period indicated above revealed the following:

- A Federal CMP was paid for surveillance findings on 7/18/2017. Findings were related to tag 684 Quality of Care cited at a G level. A revisit survey was completed on 8/23/2017, and the facility was found to be in compliance.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2022) results and the first and third-year operating budgets after the change in ownership in 2024 dollars, summarized as follows:

	<u>Current Year</u> <u>(2022)</u>		<u>First Year</u> <u>(2024)</u>		<u>Third Year</u> <u>(2026)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Medicaid FFS	\$239.73	\$6,435,960	\$258.70	\$10,209,619	\$258.70	\$10,311,715
Medicaid MC	\$239.73	401,064	\$245.80	604,412	\$245.76	610,456
Medicare FFS	\$551.68	1,531,456	\$674.95	2,754,486	\$674.92	2,782,031
Medicare MC	\$551.68	357,487	\$674.69	642,978	\$675.06	649,408
Private	\$253.49	700,403	\$271.49	1,102,501	\$271.53	1,113,526
Other-Assessment		0		533,177		538,509
ADCHP		<u>134,812</u>		<u>134,812</u>		<u>134,812</u>
Total Revenues		\$9,561,182		\$15,981,985		\$16,140,457
Expenses:						
Operating	\$444.61	\$15,431,095	\$294.71	\$15,035,590	\$292.53	\$15,073,927
Capital	<u>\$2.52</u>	<u>87,446</u>	<u>\$17.39</u>	<u>887,445</u>	<u>\$17.85</u>	<u>919,765</u>
Total Expenses	\$447.13	\$15,518,541	\$312.10	\$15,923,035	\$310.38	\$15,993,692
Net Income (Loss)		<u>(\$5,957,359)</u>		<u>\$58,950</u>		<u>\$146,765</u>
RHCF Patient Day		34,707		51,019		51,529
RHCF Utilization %		65.13%		95.74%		96.70%

The following is noted concerning the submitted RHCF operating budget:

- The current year reflects the facility's 2022 revenues and expenses.
- Medicaid revenue is based on the reimbursement methodology under the 2023 Nursing Home Medicaid Rate Sheet. The projected Medicaid Manage Care rate is based on 95% of the 2023 Medicaid Fee for Service rate.
- Medicare rates are based on the facility's forecast. Private pay rates are projected based on the current operator's reimbursement rates.
- Current year staffing is based on 2022 staffing levels. Years One and Three staffing is based on the applicant's plan to improve the facility's staffing ratios. The applicant plans to leverage its relationship with area staffing agencies, professional associations, job training programs, and health fairs to locate and hire additional staff.
- Expenses are based on 2022 operating expenses, increased by 2% for most non-payroll items and increased volume. Administrative expenses are reduced due to the planned elimination of operating expenses.
 - The projected percentage of direct care staffing costs to projected facility revenues is 57.7% in Year One and 59.0% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 74.0% in Year One and 73.5% in Year Three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 0.4% in Year One and 0.9% in Year Three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- The projected utilization for the facility is 95.74% in Year One and 96.70% in Year Three. It was noted that the facility's annual occupancy averages for 2020, 2021, and 2022 were 66.4%, 58.1%, and 65.13%, respectively. Occupancy was at 74.7% for the week ended September 13, 2023 (self-reported information to the Department).
- The applicant states that the low historical occupancy has been because the facility has voluntarily limited the number of new resident admissions to comply with minimum staffing ratios and ensure

that the facility's current residents receive the best care possible. The facility has experienced difficulties hiring and retaining qualified nursing staff over the past few years.

- The applicant plans to improve occupancy by effectively marketing the facility to prospective residents and implementing the following:
 - The applicant intends to leverage its relationship with area staffing agencies, professional associations, job training programs, and health fairs to locate and hire additional staff.
 - Strengthen relationships with area doctors, hospital discharge planners, and residents' family members regarding improvements being made at the facility;
 - Updating and beautifying resident rooms and dining rooms

Utilization by the payor for the first and third years after the change in ownership is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
<u>Pavor</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	26,847	77.35%	39,465	77.35%	39,860	77.35%
Medicaid MC	1,673	4.82%	2,459	4.82%	2,484	4.82%
Medicare FFS	2,776	8.00%	4,081	8.00%	4,122	8.00%
Medicare MC	648	1.87%	953	1.87%	962	1.87%
Private Pay	<u>2,763</u>	<u>7.96%</u>	<u>4,061</u>	<u>7.96%</u>	<u>4,101</u>	<u>7.96%</u>
Total	34,707	100%	51,019	100%	51,529	100%

The facility's Medicaid admissions of 90.8% in 2020 and 65.0% in 2021 were above Sullivan County's 75% threshold rate of 28.9% for 2020 and 20.6% for 2021.

The breakeven utilization is projected at 96.20% in the first year.

Facility Transition Agreement (FTA)

The applicant submitted an executed FTA to acquire the operations associated with the RHC and ADHP, which will become effective upon PHHP approval. The terms are summarized below:

Date:	January 9, 2023
Seller:	County of Sullivan
Buyer:	Sunset SNF Operations, LLC
Asset Acquired:	Rights, title, and interest in the assets used in the operations. Includes furniture and equipment, inventory, computers, intellectual property, trade names, permits, personal property leases, assigned contracts, books, and records, patient and supplier data, plans, deposits (starting 10/1/21), accounts receivable, and cash
Excluded Assets:	Before 10/1/21, accounts receivable, retroactive adjustments, intercompany accounts, corporate records, tax refunds, domain names, email addresses, employee benefit plans, and accrued payroll taxes.
Assumption of Liabilities:	Expenses from the operations on and after October 1, 2021 (the Consulting Date) accrue by the Consulting Agreement dated January 9, 2023.
Excluded Liabilities:	Any liability before the closing date
Purchase Price:	Assumption of Certain Liabilities estimated at \$1 million
Payment of the Purchase Price:	Liabilities will be paid off during the ordinary course of business.

BFA Attachment A presents the net worth summary for Sunset SNF Operations, LLC members, which reveals sufficient resources to cover the assumed liabilities. The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 19, 2023, the facility had no outstanding Medicaid liabilities.

Consulting Agreement

Sunset SNF Operations LLC entered a draft Consulting Services Agreement with Sunset Lakes Consulting LLC; terms are summarized below:

Facility Operator:	Sunset SNF Operations LLC
Service Provider:	Sunset Lake Consulting LLC
Term:	One year and renews for five (5) successive additional terms of one (1) year and then annually.
Services:	Provide or assist with resident relations, personnel, service contracts, maintenance and repair, collection, expenses, reports, records, legal proceedings, process insurance claims, maintenance of licenses, rate schedules, accounting and report supervision, cost reports and tax returns, and compliance with legal requirements.
Compensation:	\$400,000 per year

Sunset SNF Operations LLC has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

County of Sullivan d/b/a Sullivan County Adult Care Center currently has a Consulting Agreement with Sunset Lakes Consulting LLC, which will continue until the earlier of the CON Transition Date or July 31, 2027. Esther Klein (member of the proposed operator) is a 100% Sunset Lake Consulting LLC member. According to the County of Sullivan's 2022 certified financial statement, Sunset Lakes Consulting is paid \$360,000 annually or \$30,000 monthly.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Dated:	February 23, 2022
Premises:	A 146-bed RHCF is located at 256 Sunset Lake Road, Liberty, New York, 12754.
Landlord:	Sunset Lake Local Development Corporation
Lessee:	Sunset SNF Operations LLC
Term:	Twenty years
Rent:	\$800,000 increases by 2% per year
Provisions:	Triple Net

The applicant attested that the lease arrangement is an arm's length agreement. The applicant has provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rate.

Capability and Feasibility

The purchase price for the operations is the assumption of certain liabilities estimated to be approximately \$1 million, which will be paid off during the ordinary course of business. There are no project costs associated with this application. The working capital requirement is estimated at \$2,653,839 based on two months of first-year expenses funded from equity by the applicant members. A review of BFA Attachment A, Members' Net Worth Summary, reveals sufficient resources to meet the working capital. Kathryn Perez has provided an affidavit to contribute equity disproportionate to her membership interest.

The budget projects a net income of \$58,950 in the first year and \$146,765 by the third year. Total revenues in the first year are expected to increase by \$6,420,803 as projected utilization climbs from 65.13% to 95.74%. Overall expenses are projected to increase by \$404,494 in the first year, primarily from a \$799,999 increase in rent expenses offset by a \$395,505 reduction in operating costs. Change in operating expenses consists of an increase in salaries and wages of \$1,002,637, a decrease in employee benefits of \$705,516 (going from 59.06% to 40% wages), and a net decrease of \$692,626 primarily from Other Direct Expenses. BFA Attachment B presents Sunset SNF Operations LLC's pro forma balance sheet, which shows the entity will start with \$2,653,839 in members' equity. The budget appears reasonable.

BFA Attachment C presents Sullivan County Adult Care Center's financial summary for 2020 through 2022. The RHCf had negative assets, negative working capital, and operating loss from 2020 through 2022.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCfs and their financial summaries. Based on the certified financial statements from 2020 through 2022, the facilities had an average positive working capital of \$1,358,161, average net assets of \$4,246,317, and an average net income of \$2,927,588.

Conclusion

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

Attachments

LTCOP Attachment A	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A	Members' Net Worth of Sunset SNF Operations LLC
BFA Attachment B	Pro Forma Balance Sheet, Sunset SNF Operations LLC
BFA Attachment C	Financial Summary Sullivan County Adult Care Center 2019-2021 and their 2021 Certified Financial Statement
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCfs and Financial Summary



Project # 231220-E
Clinton County Nursing Home

Program: Residential Health Care Facility
Purpose: Establishment
County: Clinton
Acknowledged: June 8, 2023

Executive Summary

Description

CLRNC Operating, LLC, a New York limited liability company, requests approval to be established as the new operator of Clinton County Nursing Home (CCNH), an 80-bed municipal corporation, Article 28 residential health care facility (RHCF) at 16 Flynn Avenue, Plattsburg (Clinton County). Upon approval, the facility will be named Clinton Rehabilitation and Nursing Center.

On February 7, 2023, the County of Clinton entered into an Operations Transfer and Surrender Agreement (OTA) with CLRNC Operating, LLC, which will assume the RHCF operations. Concurrently, the County of Clinton entered into a Contract of Sale with CLRNC Realty LLC to sell and acquire the real property for \$5,500,000. The applicant will lease the premises from CLRNC Realty, LLC (a related entity to the applicant).

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

Table with 1 column: Current Operator
County of Clinton
A Municipal Corporation

Table with 1 column: Proposed Operator
CLRNC Operating, LLC
Members: Batia Zigelbaum 40%, Esther Barth 35%, Chaya Walden 15%, Lisa Kaplewicz* 5%, Israel Ostrovitsky 5%, Total 100%

* Managing Member

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. Current occupancy, as of September 6, 2023, was 43.8% for the facility and 74.9% for Clinton County.

Program Summary

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

Financial Summary

There is no purchase price for the operations other than a potential staff bonus, payable to the County of Clinton under certain conditions. If it becomes an obligation, it will be paid with members' equity. CLRNC Realty, LLC will purchase the real property for \$5,500,000, funded via \$1,375,000 in members' equity and a \$4,125,000 loan for five years at 8.25% amortized over 25 years. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three
Revenues: \$7,089,117, \$7,474,612
Expenses: 7,165,324, 7,165,324
Net Income: (\$76,207), \$309,288

Health Equity Impact Assessment

The was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 5, 2023.

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Contingent Approval (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed building lease agreement acceptable to the Department of Health [BFA].
3. Submission of two rent reasonable letters from New York State realtors acceptable to the Department of Health. [BFA]
4. Submission of a copy of the executed Stipulation and Order and proof that any applicable fines have been paid for all enforcements that are open as of October 19, 2023, for Gowanda Rehabilitation and Nursing Center. [LTC]
5. Submission of a copy of the executed Stipulation and Order and proof that any applicable fines have been paid for all enforcements that are open as of October 19, 2023, for Massena Rehabilitation and Nursing Center. [LTC]

Approval conditional upon:

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

Council Action Date

November 16, 2023

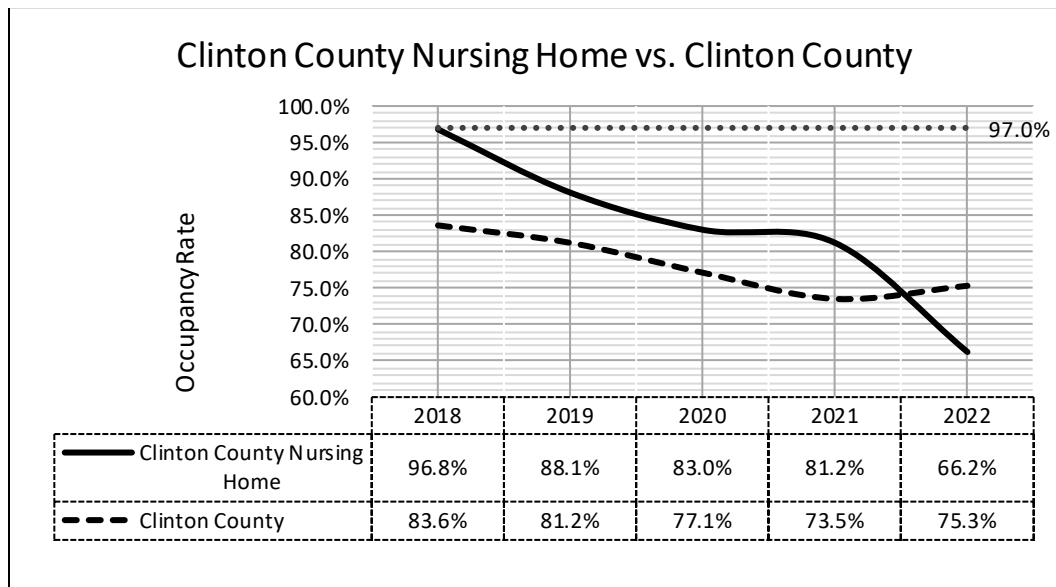
Need Analysis

Background and Analysis

The primary service area is Clinton County, which has a population that is projected to increase to 81,277 by 2028 based on Cornell Program of Applied Demographic estimates. Based on the 2021 US Census Population Estimates from the American Community Survey, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Clinton County	New York State
Total Population-2021 Estimate	80,095	20,114,745
Hispanic or Latino (of any race)	3.0%	19.2%
White (non-Hispanic)	89.7%	54.7%
Black or African American (non-Hispanic)	3.9%	13.9%
Asian (non-Hispanic)	1.4%	8.6%
Other (non-Hispanic)	2.1%	3.6%

Source: ACS 5-Year Estimates Data Profiles



2022 data is self-reported and not certified

As of September 6, 2023, occupancy was 43.8% for the facility and 74.9% for Clinton County. According to the applicant, the decrease in occupancy during 2022 and 2023 is due to the facility putting a hold on new admissions related to staffing issues and focusing on selling the facility. The applicant is planning a push to hire staff and begin taking new admissions soon. The new operator anticipates improvements in occupancy by improving the clinical care programs and increasing the overall level of care on an ongoing basis.

The table below shows the CMS Rating and the utilization of the closest RCHFs to Clinton County Nursing Home in New York State. The next three closest RCHFs are located in Vermont.

Facility Name	CMS Overall Rating	Beds	Distance from other RCHFs	Occupancy			
	As of 8/2023			2019	2020	2021	2022
Clinton County Nursing	1	80	0 miles/0 mins	88.1%	83.0%	81.2%	66.2%
Plattsburgh Rehab	1	89	0.4 miles/1 min	80.5%	80.0%	76.9%	84.3%
Champlain Valley	3	34	2.3 miles/7 mins	56.7%	60.9%	60.6%	95.9%
Meadowbrook Healthcare	2	287	2.5 miles/7 mins	84.1%	77.6%	72.7%	72.6%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Clinton County Nursing	0.8534	0.8134	0.7982	0.7973	0.801	0.781
Plattsburgh Rehab	1.3501	1.1761	1.1665	1.1665	1.354	1.27
Champlain Valley	1.1405	0.8495	1.1195	0.8638	1.062	0.825
Meadowbrook Healthcare	1.3294	1.0298	1.2892	1.2947	1.225	1.224

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- The number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Clinton County rate for the years 2019 through 2021.

Percent of New Medicaid Admissions	2019	2020	2021
Clinton County Medicaid Threshold	13.4%	21.6%	19.7%
Clinton County 75% Threshold	10.1%	16.2%	14.8%
Clinton County Nursing Home	51.2%	70.8%	37.5%

Conclusion

There will be no changes to beds or services as a result of this application.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Clinton County Nursing Home	Clinton Rehabilitation and Nursing Center
Address	16 Flynn Avenue, Plattsburgh, New York 12901	Same
RHCF Capacity	80 beds	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Municipal (County)	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Clinton	CLRNC Operating LLC <u>Membership:</u> Lisa Kaplewicz* 5.0% Israel Ostrovitsky 5.0% Batia Zigelbaum 40.0% Chaya Walden 15.0% Esther Rachel Barth 35.0% <i>*Managing Member</i>

Character and Competence

Lisa Kaplewicz lists employment as Corporate Director of Clinical Operations at Personal Healthcare, a senior care management company in Tarrytown, NY. As Corporate Director, Lisa collaborates with multiple departments in planning, directing, and evaluating all medical activities for associated skilled nursing facilities. Lisa holds a master's degree in Nursing from the University of Cincinnati and is licensed as a registered professional nurse in New York with a license in good standing. Lisa Kaplewicz did not disclose any healthcare facility ownership interests.

Israel Ostrovitsky lists employment as Controller at Personal Healthcare, a senior care management company in Tarrytown, NY. As Controller, Israel oversees the business office operations of skilled nursing and assisted living facilities. Israel holds a bachelor's degree in Accounting from Touro College and is licensed as a certified public accountant in New York with a license in good standing. Israel Ostrovitsky did not disclose any healthcare facility ownership interests.

Batia Zigelbaum is currently not employed. Previously, Batia was employed as a Midwife for Maternal Resources OB, PC in Hackensack, New Jersey. Batia holds a master's degree in nursing from Columbia University Graduate School of Nurse Midwifery and is licensed in both New York State and New Jersey as both a midwife and a registered professional nurse in addition to being licensed as a nurse practitioner (obstetrics & gynecology) in New York state. All licenses are in good standing. Batia Zigelbaum discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Orchard Rehabilitation and Nursing Center (29%)	06/2018 to present
Gowanda Rehabilitation and Nursing Center (29%)	06/2018 to present
Massena Rehabilitation and Nursing Center (26.50%)	04/2019 to present
Dunkirk Rehabilitation and Nursing Center (40%)	01/2023 to present
Eden Rehabilitation and Nursing Center (40%)	01/2023 to present
Houghton Rehabilitation and Nursing Center (40%)	01/2023 to present
Salamanca Rehabilitation and Nursing Center (40%)	01/2023 to present

Chaya Walden is currently not employed. Previously, Chaya was employed in accounts payable for Windsor Healthcare Management, a skilled nursing facility in Norwood, New Jersey. Chaya received a certificate in computer programming from the Cope Institute and discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Orchard Rehabilitation and Nursing Center (15%)	06/2018 to present
Gowanda Rehabilitation and Nursing Center (15%)	06/2018 to present
Massena Rehabilitation and Nursing Center (15%)	04/2019 to present
Dunkirk Rehabilitation and Nursing Center (15%)	01/2023 to present
Eden Rehabilitation and Nursing Center (15%)	01/2023 to present
Houghton Rehabilitation and Nursing Center (15%)	01/2023 to present
Salamanca Rehabilitation and Nursing Center (15%)	01/2023 to present

Esther Rachel Barth discloses no current or prior employment history for the past 10 years. Esther received a diploma from Bais Yaakov High School and discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Orchard Rehabilitation and Nursing Center (35%)	06/2018 to present
Gowanda Rehabilitation and Nursing Center (35%)	06/2018 to present
Massena Rehabilitation and Nursing Center (37.50%)	04/2019 to present
Dunkirk Rehabilitation and Nursing Center (35%)	01/2023 to present
Eden Rehabilitation and Nursing Center (35%)	01/2023 to present
Houghton Rehabilitation and Nursing Center (35%)	01/2023 to present
Salamanca Rehabilitation and Nursing Center (35%)	01/2023 to present

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners, the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
		Duration of Ownership*			
		< 48 Months		48 months or more	
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Lisa Kaplewicz	0	N/A	N/A	N/A	N/A
Israel Ostrovitsky	0	N/A	N/A	N/A	N/A
Batia Zigelbaum	7	4	75%	3	100%
Chaya Walden	7	4	75%	3	100%
Esther Barth	7	4	75%	3	100%

*Duration of Ownership as of 10/16/2023
Data date: 9/2023

New York. The proposed owner's portfolio includes ownership in seven New York facilities. One of the New York facilities, Eden Rehabilitation and Nursing Center, has a CMS overall quality rating of average or higher. The remaining six facilities: Houghton Rehabilitation and Nursing Center, Orchard Rehabilitation and Nursing Center, Massena Rehabilitation and Nursing Center, Gowanda Rehabilitation and Nursing Center, Dunkirk Rehabilitation and Nursing Center, and Salamanca Rehabilitation and Nursing Center, all have a CMS overall quality rating of below average or lower. To improve the quality of the low-rated facilities, the applicant indicated the following:

Dunkirk Rehabilitation & Nursing Center, Houghton Rehabilitation & Nursing Center, and Salamanca Rehabilitation & Nursing Center were acquired on January 1, 2023, and operating certificates were not received by the new operators until April 21, 2023. As described in the change of ownership applications for these facilities, the applicants' members have plans to implement measures to make these nursing homes more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The measures include but are not limited to adding clinical specialties, making physical improvements to the facilities, increasing staffing, providing continuing in-service education to the nursing staff, and implementing telehealth psych services, all of which will help the facilities to reduce survey deficiencies and achieve higher Star ratings. While these extensive measures will take time to fully implement, the new operators have started laying the groundwork, beginning the implementation process.

According to the applicant's affiliated members, the current CMS Star ratings for Orchard Rehabilitation & Nursing Center and Massena Rehabilitation & Nursing Center are based on outdated information. For Orchard, the members have stated that the current staffing information on the CMS site is from the last quarter of 2022, and they are continuing to implement measures to improve staffing and resident services; these measures are expected to result in improved Star ratings. For Massena, the facility has not had a survey since November 2021, and improvements made since that survey are not yet reflected in the overall rating. Further, the overall rating takes into account the previous three surveys. The survey prior to November 2021 was in July 2019, during the initial 60 days of the members' ownership, and the survey prior to that was in May 2018 under the prior ownership. The members are confident that the upcoming survey will reflect the improvements made and will increase the Health Inspections Ratings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Clinton County Nursing Home	Subject Facility	*	*	*	****
Orchard Rehabilitation and Nursing Center	Current	*	**	†	*
	06/2018	*	*	****	*
Gowanda Rehabilitation and Nursing Center	Current	**	***	****	*
	06/2018	*	**	****	*
Massena Rehabilitation and Nursing Center	Current	*	*	**	*
	04/2019	*	*	*	****
Dunkirk Rehabilitation and Nursing Center	Current	*	*	****	*
	01/2023	**	*	*****	*
Eden Rehabilitation and Nursing Center	Current	*****	****	*****	**
	01/2023	****	****	***	**
Houghton Rehabilitation and Nursing Center	Current	**	***	****	*
	01/2023	**	***	***	*
Salamanca Rehabilitation and Nursing Center	Current	*	*	**	*
	01/2023	*	*	**	*

† This facility's data couldn't be verified through an audit.

Data date: 09/2023

Enforcement History

New York

A review of the operations of Orchard Rehabilitation and Nursing Center for the time period indicated above reveals the following:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH-21-089 for surveillance findings on 02/02/2021. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2) Infection Control. The facility failed to maintain an infection control program by allowing employees to work shifts at the facility in excess of 12 hours who were not screened for COVID-19, and the facility also failed to observe transmission-based precautions by failing to change PPE following interactions with COVID-19-positive residents.

A review of the operations of Gowanda Rehabilitation and Nursing Center for the time period indicated above reveals the following:

- There is an enforcement for surveillance findings on 07/25/2023. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care. The facility failed to provide adequate supervision to prevent accidents. A federal CMP in the amount of \$87,480 was assessed for surveillance findings on 07/25/2023.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 for surveillance findings on 12/04/2020. Deficiencies were found under 10 NYCRR 415.9(a) Infection Control and 10 NYCRR 400.2 Other Laws, Codes, Rules, and Regulations. The facility failed to obtain COVID-19 specimen results within 48 hours for 3 staff members; failure to document facility efforts to obtain the delayed COVID-19 specimen results.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-044 for surveillance findings on 06/26/2019. Deficiencies were found under 10 NYCRR 415.4(b)(l)(i) Resident Behavior and Facility Practices. The facility failed to prevent verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion of residents.

A review of the operations of Massena Rehabilitation and Nursing Center for the time period indicated above reveals the following:

- There is an enforcement for surveillance findings on 06/28/2023. Deficiencies were found under 10 NYCRR 415.12 Quality of Care – Highest Practicable Potential. The facility failed to ensure that each resident shall receive and the facility shall provide the necessary care and services to attain or maintain the highest practical physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and plan of care subject to the resident's right of self-determination.
- There is an enforcement for surveillance findings on 06/28/2023. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care – Pressure sores with admission. The facility failed to ensure that a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.
- The facility was assessed a federal CMP of \$71,910 on 06/28/2023. The facility failed to ensure residents received treatment and care in accordance with professional standards of practice (Tag F684-G), and the facility failed to ensure a resident with pressure ulcers received the necessary treatment and services, consistent with professional standards of practice, to promote wound healing, prevent infection, and prevent new ulcers from developing (Tag F686-G). Specifically, for Tag F684-G, a resident who developed a diabetic ulcer, treatments ordered were not transcribed; ordered treatments were not implemented; attending clinicians were not notified of worsening wounds; a wound culture was not ordered as recommended, and wound culture results were not reported to the medical provider. Subsequently, the wound worsened, and the resident developed osteomyelitis and required treatment with intravenous (IV) antibiotics and a wound V.A.C. (vacuum-assisted closure). Specifically, for Tag 686-G, a resident developed pressure ulcers, and treatments were not ordered, transcribed, or administered, and pressure relief interventions were not provided. This resulted in harm that was not immediate jeopardy to the resident when their pressure ulcers subsequently worsened to Stage 3 (full thickness tissue loss) and Stage 4 (full thickness tissue loss with exposed bone, tendon, or muscle), requiring hospitalization and (IV) antibiotics for osteomyelitis (bone infection). Additionally, the resident's pressure ulcer treatments were not completed as ordered. Not yet paid.

- The facility was assessed a federal CMP of \$6,455 on 06/26/2023 under Tag F884 Reporting – National Health Safety Network.*
- The facility was assessed a federal CMP of \$5,917 on 06/20/2023 under Tag F884 Reporting – National Health Safety Network.*
- The facility was assessed a federal CMP of \$5,379 on 06/12/2023 under Tag F884 Reporting – National Health Safety Network.*
- The facility was assessed a federal CMP of \$3,147 on 06/05/2023 for failure to report COVID-19 data.
- The facility was assessed a federal CMP of \$2,797 on 05/30/2023 for failure to report COVID-19 data.
- The facility was assessed a federal CMP of \$2,447 on 05/23/2023 for failure to report COVID-19 data.
- The facility was assessed a federal CMP of \$8,067 on 5/08/2023 and 05/15/2023 under Tag F884 Reporting – National Health Safety Network.*
- The facility was assessed a federal CMP of \$5,244 on 05/02/2023 for failure to report COVID-19 data.
- The facility was assessed a federal CMP of \$987 on 03/28/2022 for failure to report COVID-19 data.
- The facility was assessed a federal CMP of \$650 on 07/13/2020 for failure to report COVID-19 data.

**The facility is currently waiting for notification of the outcome of the Informal Dispute Resolution.*

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

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

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

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

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2022) results and the first- and third-year operating budgets after the change in ownership in 2024 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid-FFS	\$176.69	\$3,172,981	\$174.43	\$3,180,204	\$174.43	\$3,356,877
Medicaid-MC	\$179.23	5,556	\$174.46	257,853	\$174.47	272,177
Medicare-FFS	\$617.21	86,410	\$625.02	1,945,069	\$625.00	2,053,125
Commercial-FFS	\$	0	\$350.13	363,080	\$350.00	383,250
Private	\$386.33	486,394	\$379.93	919,802	\$380.00	970,900
Other*		165,709		150,000		150,000
Assessment		<u>0</u>		<u>273,109</u>		<u>288,283</u>
Total Revenues		\$3,917,050		\$7,089,117		\$7,474,612
 <u>Expenses:</u>						
Operating	\$401.16	\$7,778,156	\$241.71	\$6,352,132	\$228.99	\$6,352,132
Capital	<u>\$7.23</u>	<u>140,134</u>	<u>\$30.94</u>	<u>813,192</u>	<u>\$29.31</u>	<u>813,192</u>
Total Expenses	\$408.39	\$7,918,290	\$272.65	\$7,165,324	\$258.30	\$7,165,324
 Net Income (Loss)		 <u>(\$4,001,240)</u>		 <u>(\$76,207)</u>		 <u>\$309,288</u>
 RHCf Patient Day		 19,388		 26,280		 27,740
RHCf Utilization %		66.40%		90%		95%

*Includes Pharmacy Part B Income

The following is noted concerning the submitted RHCf operating budget:

- The current year reflects the facility's 2022 revenues and expenses.
- Medicaid revenue is based on the Department of Health's 2023 Regional Pricing Rate Sheets. Medicaid Managed Care rates are the same as the Fee-For-Service since they have not been negotiated yet.
- Rates for Medicare, Commercial, and Other are based on the facility's forecast.
- Current year staffing is based on 2022 staffing levels. Year One and Year Three staffing is based on the anticipated increase in utilization and services.
- Expenses are based on 2022 operating expenses, adjusted for inflation, utilization, staffing, wages, operational efficiencies, and rent.
 - The projected percentage of direct care staffing costs to projected facility revenues is 51.07% in Year One and 48.44% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 74.93% in Year One and 71.06% in year three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be a loss of 1.07% in year one and 4.14% profit in year three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- The projected utilization for the facility is 90% in Year One and 95% in Year Three. It was noted that the facility's annual occupancy averages for 2019, 2020, 2021, and 2022 were 88.1%, 83.0%, 81.2%, and 66.40%, respectively. Occupancy was 43.8% for the week ending September 6, 2023 (self-reported information to the Department).
- According to the applicant, the decrease in occupancy during 2022 is due to the facility putting a hold on new admissions related to staffing issues and focusing on selling the facility. The applicant is planning to hire staff and begin taking new admissions soon.

- The increase in Medicare days is based on the proposed new operator's plan to provide additional subacute services to the community, resulting in more high-acuity, short-term residents. They also plan on accepting Commercial Insurance.
- The applicant members have increased census at their other facilities post-acquisition.

Utilization by the payor for the first and third years after the change in ownership is summarized below:

Payor	Current Year		Year One		Year Three	
	2022		2024		2026	
	Days	%	Days	%	Days	%
Medicaid FFS	17,958	92.63%	18,232	69.38%	19,245	69.38%
Medicaid MC	31	0.16%	1,478	5.62%	1,560	5.62%
Medicare FFS	140	0.72%	3,112	11.84%	3,285	11.84%
Commercial FFS	0	0%	1,037	3.95%	1,095	3.95%
Private Pay	<u>1,259</u>	<u>6.49%</u>	<u>2,421</u>	<u>9.21%</u>	<u>2,555</u>	<u>9.21%</u>
Total	19,388	100%	26,280	100%	27,740	100%

The facility's Medicaid admissions of 70.8% in 2020 and 37.5% in 2021 were above Clinton County's 75% threshold rate of 16.2% for 2020 and 14.8% for 2021.

The breakeven utilization is projected at 91% in the third year.

Operations Transfer and Surrender Agreement (OTA)

The applicant submitted an executed OTA to assume the operations associated with the RHCF, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	February 7, 2023
Transferor:	County of Clinton
Transferee:	CLRNC Operating, LLC
Asset Transferred:	Rights, title, and interest in the assets used in the operations. Includes furniture and equipment, computers, vehicles, parts, inventory, assumed contracts, manuals, owned software, telephone and facsimile numbers, books, records, permits, trust property, Goodwill, Medicare and Medicaid provider agreements, and third-party payor programs.
Excluded Assets:	Cash, marketable securities, grant awards, rate adjustments, accounts receivable, third-party payments, and intergovernmental transfer payments.
Assumption of Liabilities:	It is related to the period after closing.
Excluded Liabilities:	Any liability before the closing date
Purchase Price	None
Stay Bonus	If, at closing, 70% of staff equivalent remain employed, Transferee will pay Transferor \$275,000. If, at closing, 60% of staff equivalent remain employed, Transferee will pay Transferor \$200,000.

BFA Attachment A-1 presents the net worth summary for CLRNC Operating, LLC members, which reveals sufficient resources to cover the Stay Bonus.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of July 31, 2023, the facility had no outstanding Medicaid liabilities.

Contract of Sale

The applicant has submitted an executed contract of sale for the RHCF's realty. The terms are summarized below:

Date:	February 7, 2023.
Seller:	County of Clinton
Purchaser:	CLRNC Realty, LLC.
Asset Transferred:	Real Property and Other Property (fixtures and improvements) located at 16 Flynn Avenue, Plattsburgh, New York 12901
Excluded Assets	All assets transferred via OTA, 2019 Ford Super Duty F350, and 2007 John Deere 1128DE.
Purchase Price:	\$5,500,000
Payment of Purchase Price:	\$550,000 deposit at signing \$4,950,000 balance due at closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity – CLRNC Realty, LLC	\$ 1,375,000
Loan – (5) five years, 8.25%, 25-year amortization	<u>4,125,000</u>
Total	\$5,500,000

M&T Bank has provided a letter of interest.

BFA Attachment A-2 presents CLRNC Realty, LLC members' net worth, which reveals sufficient resources to meet the equity requirement. There are adequate liquid resources to fund a balloon payment should acceptable financing not be available during refinancing. Esther Barth has provided an affidavit stating her willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall.

Lease Agreement

The applicant submitted a draft lease agreement; the terms are summarized below:

Premises:	An 80-bed RHCF located at 16 Flynn Avenue, Plattsburg, New York, 12901.
Landlord:	CLRNC Realty, LLC
Lessee:	CLRNC Operating, LLC
Term:	Ten Years - Automatically extends for twenty (20) one (1) year renewals.
Rent:	\$600,000 annual rent plus \$60,000 in estimated property taxes and \$13,000 for property insurance.
Provisions:	Triple Net

The applicant attested that the lease arrangement is a non-arms-length agreement. The applicant has yet to acquire rent reasonableness letters despite extensive efforts. Because of the lack of response from local realtors, they contacted the Clinton County Board of Realtors for assistance. A contingency has been established for the two rent reasonable letters from NYS licensed realtors.

Capability and Feasibility

There is no purchase price for the operations other than a potential staff bonus, payable to the County of Clinton under certain conditions. If it becomes an obligation, it will be paid by members' equity. CLRNC Realty, LLC will purchase the real property for \$5,500,000, funded with \$1,375,000 in members' equity and a \$4,125,000 loan for five years at 8.25% amortized over 25 years. M&T Bank has provided a letter of interest. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,270,428 based on two months of first-year expenses of \$1,194,221 plus the projected first-year loss of \$76,207 funded from equity by the applicant members.

A review of BFA Attachment A-1, members' net worth summary, reveals sufficient resources to meet the working capital. Esther Barth has provided an affidavit stating her willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall.

The budget projects a loss of \$76,207 in the first year and a profit of \$309,288 by the third year. Total revenues in the first year are expected to increase by \$3,172,067 as projected utilization climbs from 66.4% to 90%. Overall expenses are projected to decrease by \$752,966 in the first year, primarily from a \$2,100,150 reduction in employee benefits, offset by an increase in salaries and wages of \$639,434, \$673,000 in rent expenses, and a \$34,750 various net increases. Employee benefits are projected to go from 74.37% to 13% of salaries and wages. BFA Attachment B presents CLRNC Operating, LLC's Pro Forma Balance Sheet, which shows the entity will start with \$1,470,428 in members' equity. Equity includes \$200,000 in goodwill, which is not a liquid resource nor recognized for Medicaid reimbursement. The budget appears reasonable.

BFA Attachment C presents Clinton County Nursing Home's financial summary for 2020 through 2022. The RHCf had average negative assets, average positive working capital, and average operating losses during this time.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCfs and their financial summaries. Based on the financial statements from 2020 through 2022, the facilities had an average positive working capital of \$536,253, average net assets of \$2,432,253, and an average net loss of \$440,359. Please note that the four facilities acquired in January 2023 are not included.

Conclusion

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

<h2>Attachments</h2>

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A-1	Members' Net Worth of CLRNC Operating, LLC
BFA Attachment A-2	Members' Net Worth of CLRNC Realty, LLC
BFA Attachment B	Pro Forma Balance Sheet, CLRNC Operating, LLC
BFA Attachment C	Financial Summary Clinton County Nursing Home 2020-2022 and their 2022 Certified Financial Statement
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCfs and Financial Summary



Project # 231259-E
Tupper Lake Center LLC d/b/a
Tupper Lake Center for Nursing and Rehabilitation

Program: Residential Health Care Facility
Purpose: Establishment

County: Franklin
Acknowledged: June 15, 2023

Executive Summary

Description

Tupper Lake Center LLC, an existing New York limited liability company, requests approval to be established as the new operator of Mercy Living Center, a 60-bed, voluntary not-for-profit corporation, Article 28 residential health care facility (RHCF), at 114 Wawbeek Avenue, Tupper Lake, NY (Franklin County). Upon approval, the facility will be known as Tupper Lake Center for Nursing and Rehabilitation.

On March 27, 2023, Adirondack Medical Center entered into an Operations Transfer and Surrender Agreement (OTA) with Tupper Lake Center LLC for the transfer and acquisition of the RHCF's operations. Concurrently, Adirondack Medical Center entered a Real Estate Contract of Sale with Tupper Lake Propco LLC for the sale and acquisition of the RHCF's real estate for a purchase price of \$800,000. There is a relationship between Tupper Lake Center LLC and Tupper Lake Propco LLC in that the entities have common ownership. Tupper Lake Center LLC will lease the RHCF premises from Tupper Lake Propco LLC.

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

<u>Current Ownership</u>	
Adirondack Medical Center d/b/a Adirondack Health	
<u>Shareholders:</u>	
Adirondack Medical Center	100.0%

<u>Proposed Ownership</u>	
Tupper Lake Center LLC	
<u>Members:</u>	
Menajem (Mark) Salamon*	67.0%
Jonathan Gewirtz	33.0%
Total	100.0%

* *Managing Member*

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

<u>Current Ownership</u>	
Adirondack Medical Center d/b/a Adirondack Health	
<u>Shareholders:</u>	
Adirondack Medical Center	100.0%

<u>Proposed Ownership</u>	
Tupper Lake Propco LLC	
<u>Members:</u>	
Tupper Lake Investors LLC	10.0%
Siata Holdings, LLC	57.0%
Sari Landa	5.5%
Esther Gewirtz	5.5%
Alan Landa	5.5%
Steven Landa	5.5%
Joseph Landa	5.5%
Joshua Landa	5.5%
Total	100.0%

Yehudis Klein and Blimie Perlstein are each 50% owners of the Tupper Lake Investors, LLC. Menajem Salamon Family Trust is the sole member of Siata Holding, LLC. The beneficiaries of this trust are the children of Menajem Salamon, who is a non-member

Manager of Siata Holdings, LLC. David Salamon (Menajem Salamon's brother) is the Trustee of the Menajem Family Trust.

Menajem Salamon, one of the proposed members of Mercy Operating, LLC, is also seeking PHHPC approval to be established as the new operator of Highland Nursing Home, Inc. d/b/a North Country Nursing and Rehabilitation.

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. Current occupancy, as of September 6, 2023, was 81.7% for the facility and 86.7% for Franklin County.

Program Summary

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

Financial Summary

There are no project costs associated with this application. There are no costs associated with the acquisition of operations of the facility; the applicant will assume certain liabilities related to assumed contracts. The total purchase price for the RHCF's realty is \$800,000 and will be funded with equity from members of Tupper Lake Propco LLC. The proposed budget is as follows:

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,063,940	\$8,101,899
Expenses	<u>8,047,007</u>	<u>8,051,741</u>
Gain/(Loss)	\$16,933	\$50,158

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 26, 2023.

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR).

Approval conditional upon:

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

Council Action Date

November 16, 2023

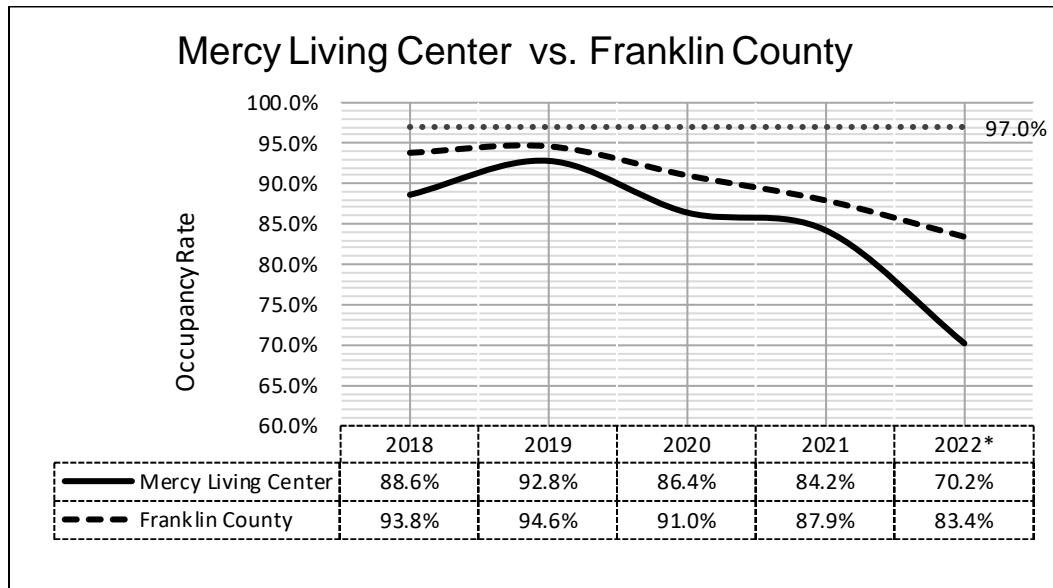
Need Analysis

Background and Analysis

The primary service area is Franklin County, which has a population that is projected to increase to 49,558 by 2028 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Franklin County	New York State
Total Population (2021 Estimate)	47,996	20,114,745
Hispanic or Latino (of any race)	3.6%	19.2%
White (non-Hispanic)	81.1%	54.7%
Black or African American (non-Hispanic)	5.1%	13.9%
Asian(non-Hispanic)	0.6%	8.6%
Other (non-Hispanic)	9.7%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)



*2022 data is self-reported and not certified

As of September 6, 2023, occupancy was 81.7% for the facility and 86.7% for Franklin County. The facility's occupancy rates during 2021 and 2022 were impacted by COVID-19, but occupancy levels have improved as the effects of the pandemic have waned.

The table below shows the CMS Rating and the utilization of the closest RCHFs to Mercy Living Center.

Facility Name	CMS Overall rating	Number of Beds	Distance from other RCHFs	Occupancy			
	As of 8/2023			2019	2020	2021	2022
Mercy Living Center	1	60	0 miles/0 mins	92.8%	86.4%	84.2%	70.2%
Elderwood of Uihlein (Essex)	1	156	30.7 miles/41 mins	62.9%	61.6%	52.3%	54.9%
United Helpers (St Lawrence)	4	96	54.3 miles/67 mins	51.2%	93.9%	83.9%	89.0%
Essex Center(Essex)	1	100	56.0 miles/72 mins	95.3%	89.2%	93.1%	91.7%
Alice Hyde	2	135	60.4 miles/73 mins	95.4%	93.1%	89.6%	89.2%
Elderwood at No. Creek (Warren)	3	82	60.6 miles/71 mins	89.4%	79.6%	71.1%	65.4%
Massena Rehab (St. Lawrence)	1	160	71.3 miles/95 mins	87.8%	78.0%	72.2%	91.0%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Mercy Living Center	1.118	0.9115	N/A	N/A	1.034	0.884
Elderwood of Uihlein (Essex)	1.2791	1.0075	1.1304	1.0565	1.256	1.129
United Helpers (St Lawrence)	1.136	0.9436	0.987	1.0125	0.958	0.988
Essex Center (Essex)	1.2863	1.1447	1.2343	1.2559	1.367	1.373
Alice Hyde	1.2156	0.9165	1.0629	0.9131	1.064	0.891
Elderwood at No. Creek (Warren)	1.1154	0.9316	1.1754	1.1147	1.191	1.111
Massena Rehab (St. Lawrence)	1.1509	0.8879	1.0687	0.965	1.257	1.123

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- The number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Franklin County rate for the years 2019 through 2021.

Percent of New Medicaid Admissions	2019	2020	2021
Franklin County Medicaid Threshold	24.1%	16.8%	17.5%
Franklin County 75% Threshold	18.1%	11.9%	13.1%
Mercy Living Center	21.7%	18.7%	19.0%

Conclusion

There will be no changes to beds or services as a result of this application.

Program Analysis

Program Description

This application proposes to establish Tupper Lake Center LLC as the new operator of Mercy Living Center, an existing 60-bed residential health care facility, at 114 Wawbeek Avenue, Tupper Lake (Franklin County), New York 12986.

	Existing	Proposed
Facility Name	Mercy Living Center	Tupper Lake Center for Nursing and Rehabilitation
Address	114 Wawbeek Avenue, Tupper Lake, New York 12986	Same
RHCF Capacity	60 beds	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-Profit Corporation	Proprietary
Operator	Adirondack Medical Center	Tupper Lake Center LLC <u>Membership:</u> Menajem (Mark) Salamon* 67% Jonathan Gewirtz 33% <i>*Managing Member</i>

Character and Competence

Menajem (Mark) Salamon lists concurrent employment as Executive Director and Licensed Nursing Home Administrator of Gold Crest Care Center, Bronx, NY, as well as Chief Executive Officer of Highland Nursing Home d/b/a North Country Center for Nursing and Rehabilitation (the subject facility). Menajem (Mark) holds a bachelor's degree in Jewish Studies from the Israel Torah Research Institute and is licensed as a Nursing Home Administrator in both New York and New Jersey, with the New York license currently in good standing. The following healthcare facility ownership interests were disclosed:

New York Nursing Homes

Gold Crest Care Center (7.5%)	01/2022 to present
Windsor Park Rehab & Nursing Center (7.5%)	01/2022 to present

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (40%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present

Jonathan Gewirtz lists employment as Controller at Gold Crest Care Center in Bronx, NY; this role is responsible for fiscal oversight, including auditing Medicare and Medicaid payments for accuracy, revalidating Medicare and Medicaid certifications, and establishing policies and procedures to comply with regulations as well as establishing best practice systems for billing and finance-related activity. Jonathan provides similar services at the following facilities: Fieldston Lodge Care Center, Bronx, NY; Wellsville Manor Care Center, Wellsville, NY; Valley View Manor Nursing Home, Norwich, NY; Sunnyside Care Center, East Syracuse, NY, and Windsor Park Nursing Home, Queens, NY. Jonathan holds a master's degree in Talmudic studies from the Rabbinical College of Telshe and discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Hollis Park Manor Nursing Home (14%)	06/2015 to present
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Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners, the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Menajem (Mark) Salamon	8	7	71.4%	1	100%
Jonathan Gewirtz	1	0	N/A	1	0%

*Duration of ownership as of 11/16/23

Data date: 09/2023

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

Connecticut. The proposed owner's portfolio includes ownership in six Connecticut facilities, all of which have a CMS overall quality rating of below average or much below average. Please note: New Haven Center for Nursing and Rehabilitation is on the CMS Special Focus Facility (SFF) Candidate List (added to the list 13 months ago as of 09/2023; thus, was added to the list while under the current management). To improve the quality at the six Connecticut facilities, the applicant indicated the following:

Regarding Torrington Center for Nursing and Rehabilitation, this facility's current Overall star rating of two stars represents a one-star increase, as compared to the facility's Overall star rating in 2021 when Mr. Salamon first became affiliated with this facility. As Mr. Salamon continues to make operational improvements at the facility, he is hopeful that the facility's Overall star rating will increase to three stars within the near term. Regarding West Haven Center for Nursing and Rehabilitation, Southport Center for Nursing and Rehabilitation, New Haven Center for Nursing and Rehabilitation, and Advanced Center for Nursing and Rehabilitation, the applicant states that there has not been a Department of Health survey at these facilities in more than two years. As a result, these facilities' star ratings have not been updated since that time. As noted, these facilities have not had any surveys in the past two years, and they expect the next survey to be positive, which should serve to increase the Overall star rating at each facility. Regarding the Special Focus Candidate designation at New Haven Center for Nursing and Rehabilitation, it is important to note that this facility was a Special Focus Facility Candidate prior to the new operators becoming involved with the operation of the facility in 2021. Mr. Salamon is hopeful that this facility will be removed from the Special Focus Facility Candidate List within the near term.

Mr Salamon states that the New Haven Center for Nursing and Rehabilitation received several G-level tags that ultimately led to the facility being placed on the SFF Candidate List. Mr. Salamon's affiliation with this facility began in November of 2021, which is a period of approximately nine months prior to the facility being placed on the SFF Candidate List in August of 2022. Mr. Salamon states that it often takes longer than nine months for positive institutional changes to be reflected in the quality of a nursing facility. However, as a testament to the positive operational improvements that have been made to the facility, Mr Salamon is pleased to report that, as of July 25, 2023, the Connecticut Department of Public Health has removed the Independent Nurse Consultant (INC) who was placed at the facility as part of The Connecticut Department of Public Health's regulatory oversight of all new operators of nursing homes located within Connecticut. The removal of the INC was the result of several positive quality inspections conducted by the INC. Mr. Salamon also states that his group continues to work with facility staff to improve quality even further. As additional evidence supporting the positive changes being made at the facility, Mr. Salamon reports that the facility received no G-level tags or Immediate Jeopardy violations

during the facility's last survey. As a result of these positive developments, Mr. Salamon is optimistic that this facility will be removed from the Special Focus Facility Candidate List in the near term.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Mercy Living Center	Subject Facility	*	*	**	****
Gold Crest Care Center	Current	*****	****	*****	**
	01/2022	*****	*****	*****	**
Windsor Park Rehab & Nursing Center	Current	*****	*****	****	***
	01/2022	*****	*****	****	***
Hollis Park Manor Nursing Home	Current	****	***	*****	***
	06/2015	****	****	*****	*
Connecticut					
Advanced Center for Nursing and Rehabilitation	Current	*	*	***	*
	10/2016	*	*	***	***
West Haven Center for Nursing and Rehabilitation	Current	*	*	***	*
	11/2021	***	**	*****	***
Southport Center for Nursing and Rehabilitation	Current	*	*	‡	**
	11/2021	*	*	**	**
New Haven Center for Nursing and Rehabilitation†	Current	*	*	***	*
	11/2021	*	*	**	***
Waterbury Center for Nursing and Rehabilitation	Current	**	**	*****	***
	11/2021	**	*	***	*****
Torrington Center for Nursing and Rehabilitation	Current	**	**	***	**
	11/2021	*	*	****	***

‡ This facility submitted data that could not be verified through an audit

† Special Focus Facility Candidate (on the list for 13 months as of 09/2023)

Data date: 09/2023

Enforcement History

New York

A review of the operations of Gold Crest Care Center for the period indicated above revealed no enforcements.

A review of the operations of Windsor Park Rehab & Nursing Center for the period indicated above revealed no enforcements.

A review of the operations of Hollis Park Manor Nursing Home for the period indicated above revealed no enforcements.

Connecticut

A review of the operations of the Advanced Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal Civil Money Penalty (CMP) of \$40,724 on 04/07/2022 for failure to provide appropriate treatment and care according to orders, resident's preferences, and goals and for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent accidents.

A review of the operations of West Haven Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$6,630 on 09/20/2022 for failure to provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and the resident's advance directives and for failure to ensure services provided by the nursing facility meet professional standards of quality.

A review of the operations of Southport Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$8,648 on 06/24/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of the New Haven Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$199,306 on 08/03/2022 for failure to ensure services provided by the nursing facility met professional standards of quality and for failure to provide enough nursing staff every day to meet the needs of every resident and have a licensed nurse in charge on each shift. Specifically, the facility failed to administer medications as prescribed (to 21 residents), failed to notify the DNS and physician when medications were not administered, failed to complete assessments of the residents' condition after medications were omitted, failed to monitor residents who had significant medication omissions and failed to accurately document the medication omissions. Further, the facility failed to ensure licensed staff followed professional standards of practice, including reporting to the oncoming and off-going shifts, narcotic count, and ensuring the security of the narcotic keys.
- The facility was assessed a federal CMP of \$51,077 on 04/27/2022 for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals and for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.

A review of the operations of Waterbury Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a CMP of \$9,750 on 06/23/2022. The applicant states that this CMP was related to an isolated infection control incident at the facility. Initially, a G-Level Tag was issued relative to this incident but was later removed by CMS. The fine has been paid, and this matter is resolved.

A review of the operations of Torrington Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$650 on 01/03/2022 for failure to report COVID-19 data.

On 03/27/2023, an Interim Consultative Services Agreement was entered into by and between Adirondack Medical Center and Tupper Lake Consulting Group LLC. The interim agreement will terminate when this CON has been approved, and all contingencies have been fulfilled. Once Tupper Lake Center LLC has assumed ownership of the facility, there is no intent to enter into any agreement(s) involving the management/administrative/billing or consulting services for the facility.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted the current year (2021) operations and an operating budget for the first and third years after the change in operator, summarized below:

	<u>Current Year</u> (2021)		<u>Year One</u> (2024)		<u>Year Three</u> (2026)	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicare FFS	\$552.75	\$271,955	\$640.29	\$363,686	\$675.31	\$383,576
Medicare MC	\$552.75	\$247,081	\$640.35	\$330,422	\$675.37	\$348,492
Medicaid FFS	\$324.55	\$3,616,405	\$324.55	\$4,176,948	\$324.55	\$4,176,948
Medicaid MC	\$324.55	\$508,562	\$324.55	\$587,389	\$324.52	\$587,389
Private Pay	\$655.02	\$3,140,809	\$655.04	\$3,627,634	\$655.04	\$3,627,634
Less: Bad Debt		(3,335,870)		(1,167,555)		(1,167,555)
Total Pt. Revenues		\$4,448,943		\$7,918,524		\$7,956,484
Other Oper. Rev.		<u>230,177</u>		<u>145,415</u>		<u>145,415</u>
Total Revenues		\$4,679,120		\$8,063,940		\$8,101,899
 <u>Expenses:</u>						
Operating	\$418.90	\$7,726,203	\$307.03	\$6,540,301	\$307.25	\$6,545,035
Capital	<u>\$16.76</u>	<u>\$309,111</u>	<u>\$70.73</u>	<u>\$1,506,706</u>	<u>\$70.73</u>	<u>\$1,506,706</u>
Total Expenses	\$435.66	\$8,035,314	\$377.76	\$8,047,007	\$377.98	\$8,051,741
Net Income (Loss)		(\$3,356,194)		\$16,933		\$50,158
Patient Days		18,444		21,302		21,302
Occupancy		84.2%		97.3%		97.3%

The following is noted for the submitted RHCf operating budget:

- The facility's forecasted Medicaid reimbursement rate for Years One and Three is based on the DOH's 2023 Medicaid Regional Pricing rate.
- The facility's projected occupancy in Years One and Three of 97.3% is based on the facility's 2021 occupancy, increased to account for applicants' plan to market the facility more effectively to prospective residents. Occupancy for the period 2021-2022 has averaged 77.3%, and as of October 11, 2023, the occupancy was at 90.0%.
- Years One and Three operating expenses are based on 2021 operating expenses, increased by 2% for most non-payroll items, and reflect the reduction of certain direct operating expenses based on efficiencies that are expected to be realized by the new operator.

Utilization by payor for the current year and first and third years after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	3.49%	4.00%	4.20%
Medicare MC	3.17%	3.64%	3.82%
Medicaid FFS	46.45%	45.97%	45.78%
Medicaid MC	6.53%	6.46%	6.44%
Private Pay	<u>40.35%</u>	<u>39.93%</u>	<u>39.76%</u>
	100.00%	100.00%	100.00%

Operations Transfer and Surrender Agreement

The applicant submitted an executed operations transfer and surrender agreement (OTA) to acquire the RHC's operating interests, liabilities, and obligations, as summarized below:

Date:	March 27, 2023
Transferor:	Adirondack Medical Center d/b/a Adirondack Health
Transferee:	Tupper Lake Center LLC
Facility:	Mercy Living Center, an Article 28, 60-bed Skilled Nursing Facility
Assets Acquired:	Assets used in connection with the operation and/or management of the facility, certain tangible and intangible property and other interests solely and exclusively relating to the facility including title, physical custody, all furniture, fixtures, furnishings, equipment, appliances, tools, instruments, machinery that exist on the date of this OTA and other tangible personal property owned by transferor, all inventory and supplies including office, medical disposables, prescription medications, pharmaceutical inventories, computers, computer equipment and hardware, office equipment, trucks, vehicles and other transportation equipment, all material outstanding contracts, agreements, leases, purchase orders to the extent transferrable, all menus, operating manuals, training materials, marketing, sales and promotional materials, all rights to telephone and facsimile numbers, all administrative records, financial books and records, employee and payroll records, medical staff records, copies of all books and records related to operations, licenses, certificates, permits, waivers, accreditations, guarantees, certificate of occupancy, utility lease agreement, goodwill, provider numbers, resident funds held in trust, all cash deposits, funds from rate adjustments and appeals, all accounts receivable, residents records, residents' charts, transferor's rights and interest in Medicare, Medicaid and third party provider numbers and reimbursement agreements, all other assets owned by the transferor at closing.
Excluded Assets:	Licenses and permits that are not assignable or transferable, investments and settlements owned by the transferor, grant awards, other awards, any funds received from the Medicare Accelerated and Advance Payment Program or Payroll Protection Program Loans, state equivalent stimulus money, retroactive rate increases all cash and account receivable related to services rendered prior to the effective date, excluded assets under the real estate contract of sale, tax records, record books related to the legal organization of transferor, insurance refunds and claims, monies held in retirement programs, all actions claims and lawsuits owned by transferor, intellectual property, software and databases not related to the business, prepaid expenses and refunds for taxes.
Assumed Liabilities:	All obligations and liabilities under the assumed contracts.
Purchase Price:	None

There are no costs associated with the acquisition of operations of the facility and the applicant will assume certain liabilities related to the assumed contracts.

Real Estate Contract of Sale

The applicant submitted an executed real estate contract of sale to acquire the RHCF's real property, as summarized below:

Date:	March 27, 2023
Seller:	Adirondack Medical Center d/b/a Adirondack Health
Buyer:	Tupper Lake Propco LLC
Real Property:	All real property with all improvements and certain personal property used in the operation of a 60-bed skilled nursing home located at 114 Wawbeek Avenue, Tupper Lake, NY (Franklin County).
Excluded Assets:	Furnishings, fixtures and equipment associated with seller's physical therapy outpatient space at the Mercy Living Center, items subject to leases and contracts not assumed by the buyer, licenses approvals and permits that are not assignable or transferrable, marketable securities, investments, cash and accounts receivables and collections owned by seller as of the closing, any grant or other awards to the seller for the retained facilities, assets and assumed liabilities and assumed contracts under the OTA, tax records, record books, all refunds and claims under sellers insurance prior to closing and the insurance policies themselves, all actions, claims, and lawsuits owned by the seller not expressly assumed by the buyer, intellectual property including materials bearing "Mercy Living Center", "Adirondack Health" and/or "Adirondack Medical Center", software and databases for which seller does not have unlimited authority, all contracts not assumed by buyer, all prepaid expenses and all refunds, claims, abatements, and adjustments for taxes, personal computers, non-real-estate related inventory, copiers, printers, scanners leased from SymQuest.
Purchase Price:	\$800,000
Payment of the Purchase Price:	\$40,000 deposited and held in escrow. \$760,000 due at closing. Real Estate transaction closed on July 17, 2023

The purchase price of the realty interest in the facility will be satisfied via equity from members of Tupper Lake Propco LLC.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 October 13, 2023, the facility had no outstanding Medicaid liabilities.

Lease Rental Agreement

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

Facility:	A 60-bed skilled nursing facility located at 114 Wawbeek Avenue, Tupper Lake, NY (Franklin County)
Landlord:	Tupper Lake Propco LLC
Tenant:	Tupper Lake Center LLC
Term:	5-year term with an option to extend for two (2) additional 5-year terms.
Rental:	\$1,200,000 per year (\$100,000 monthly) for Years 1 through 5, and a 3% annual increase in Years 6 through 15.
Provisions:	The tenant is responsible for maintenance, insurance, taxes, and utilities.

The lease arrangement is a non-arms-length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant in that there is common ownership between

Tupper Lake Propco LLC and Tupper Lake Center LLC. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per-square footage rental.

Interim Consultative Service Agreement (ICSA)

The applicant has provided an executed ICSA, with terms summarized below:

Date:	March 27, 2023
Operator:	Adirondack Medical Center
Consultant:	Tupper Lake Consulting Group LLC
Administrative Services:	Conduct development, maintenance, revisions, and administration of the overall charge and billing structure of the Facility pursuant to Applicable Law, including, but not limited to, Facility services, charges for all ancillary services, charges for supplies and special services, and implementing and monitoring all relevant and agreed-upon changes in the charge structure. Consultant shall establish, revise, and administer wage scales, rates of compensation, employee benefits and conditions of employment, in-service training, attendance at seminars or conferences, staffing schedules, and job and position descriptions with respect to Operator's employees who staff the Facility. Preparation of all first and third-party bills for services and materials rendered by the facility, generation and submission of patient bills and third-party payor bills to the responsible party, either in paper or electronic format, as appropriate; the processing of denied claims and revision and resubmission of such claims for payment to the patient, or applicable third-party payor; follow-ups on unpaid claims, including the sending of patient follow-up statements at such intervals as reasonably determined by Consultant and referrals for collection, subject to applicable written policies of the Facility; answering of inquiries received by phone; Assist with all billing and collection work in the name of, on behalf of, Operator. Maintain a standard reporting system to regularly inform Operator of the current status of the Facility's billing and collection accounts. Payment of Accounts and Indebtedness. Assist with the payment of payroll, trade accounts, and amounts due on short-and long-term indebtedness.
Term:	The agreement shall commence on the closing date of the real property and terminate upon earlier of the date to which the parties mutually consent in writing or the date on which CON approval is received.
Consulting Fee:	\$1.00
Delay Fee:	\$5,000

The executed ICSA provides that the established operator retains ultimate authority, responsibility, and control in all the final decisions associated with the services. In accordance with the Department's ASA policy effective December 13, 2016, the terms of the executed ICSA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes, and regulations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

There are no costs associated with the acquisition of operating interest. The total purchase price for the RHCF's operations and realty is \$800,000 and is funded with proposed member equity. The working capital requirement is estimated at \$1,341,168 based on two months of first-year expenses, to be funded with the proposed member's equity. BFA Attachment A presents a summary of the net worth of the applicant members, which indicates sufficient resources to meet the equity requirement overall.

The submitted budget projects net income from operations of \$16,933 in Year One and \$50,158 in Year Three. The budget appears reasonable.

BFA Attachment C presents the Pro Forma Balance Sheet of Mercy Operating, LLC, which indicates positive members' equity of \$1,341,168.

BFA Attachment D, the 2021-2022 Financial Summary of ADKH and Affiliates, indicates the facility had positive working capital and positive equity. The entity had a net income of \$7,403,132 in 2021 and a net loss of \$15,613,405 in 2023. The 2021 reported net income included a \$3,356,193 net loss attributable to Mercy Living Center. Similarly, ADKH's 2022 net loss included a \$4,533,555 net loss attributable to Mercy Living Center.

As of June 30, 2023, ADKH reported positive working capital, positive equity, and a net loss of \$558,782. For the period ending June 30, 2023, Mercy Living Center reported a net loss of \$1,509,345. The reported losses at the SNF facility in 2021 were due to lower-than-expected occupancy. Losses reported by Mercy Living Center in 2022 and 2023 are attributable to a voluntary hold placed on new resident admissions due to staffing shortages at the facility. During 2023, the facility sourced additional personnel from local staffing agencies and lifted the hold on new resident admissions, leading to expected improvements in occupancy.

BFA Attachment E presents a financial summary of proposed members' affiliated nursing homes based on Certified Financial Statements for the years ended December 31, 2020, 2021, and 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset positions, net equity, and reported net income from operation, except for Hollis Park and Windsor Park, which reported negative working capital positions in 2020. The negative working capital reported by Hollis Park in 2020 is attributable to a higher-than-expected level of third-party payables during that time. The negative net asset position and net loss reported by Windsor Park in 2020 are attributable to the negative impacts of the COVID-19 pandemic on the facility. Windsor Park's 2022 operating loss is attributable to a lower-than-expected occupancy at the facility.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BFA Attachment A	Mercy Living Center, LLC – Proposed Members Net Worth
BFA Attachment B	Mercy Living Center, LLC – Equity Analysis
BFA Attachment C	Mercy Operating, LLC – Pro Forma Balance Sheet
BFA Attachment D	Adirondack Health and Affiliates – Financial Summary 2021-2022 and June 2023 Internal Financial Summary
BFA Attachment E	Proposed Member's – Affiliated RHCFC Financial Summary 2020-2022 Internal Financial Summary
BFA Attachment F	Organization Chart – Proposed Members



**Project # 231010-E
Vilas Home Care, LLC**

Program: LHCSA
Purpose: Establishment

County: Clinton
Acknowledged: February 16, 2023

Executive Summary

Description

Villas Home Care, LLC, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office at 61 Beekman Street, Plattsburgh, NY 12901:

- Clinton
- Essex
- Franklin

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide
- Physical Therapy
- Occupational Therapy
- Medical Social Work
- Homemaker
- Housekeeper

**OALTC Recommendation
Approval**

Need Summary

This CON meets the need requirements set forth in 10 NYCRR Section 765-1.16 as all counties requested have a presumed need.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended

Council Action Date

November 16, 2023

Program Analysis

Program Description

Villas Home Care, LLC requests approval to obtain licensure as a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office at 61 Beekman Street, Plattsburgh, NY 12901:

- Clinton
- Essex
- Franklin

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide
- Physical Therapy
- Occupational Therapy
- Medical Social Work
- Homemaker
- Housekeeper

Character and Competence Review

The membership of Vilas Home Care, LLC is comprised of the following individual:

Eli Schwartzberg - 100%

Sole Member/Operator, Plattsburgh ALR, Inc.

Sole Member/Operator, Champlain Valley Senior Community

Affiliations

- Plattsburgh ALR d/b/a Samuel F. Vilas Home (January 2019-Present)
- Champlain Valley Senior Community (2012-present)

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

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care service agency.

Facility Compliance/Enforcement

The Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- Plattsburgh ALR d/b/a Samuel F. Vilas Home was fined \$2,000 pursuant to a Stipulation and Order from an October 1, 2020, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 487 Sections 487.9(a)(8).
- Plattsburgh ALR d/b/a Samuel F. Vilas Home was fined \$6,000 pursuant to a Stipulation and Order from a January 27, 2021, survey for violation of Article 7 of Social Services Law and 18 NYCRR Part 486.5(a)(4)(v).
- Plattsburgh ALR d/b/a Samuel F. Vilas Home was fined \$3,000 pursuant to a Stipulation and Order from an April 7, 2021, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 486.5(a)(4)(v).

Need Review

This CON meets the need requirements set forth in 10 NYCRR Section 765-1.16 as all counties requested have a presumed need.

Financial Review

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

Workforce Review

Current availability of professional/paraprofessional staff:

- The current availability of workers is strong. Several assisted living communities in the area are 100% staffed, and other nursing homes have seen stabilization of staff.

Competing employers:

- Competing employers include HCR of Rochester, North Country Home Services, Meadowbrook Healthcare, Plattsburgh Nursing Home, CVPH Nursing Home, and Clinton County Nursing Home.

Training, recruitment, and workforce initiatives:

- The applicant reports they will ensure each employee has a thorough and effective onboarding with an organized training program that sets them up for success and ensures that the clients receive high-level care. They plan to provide a driving stipend and have company vehicles to reduce the cost of travel for the staff. They report they will attend job fairs and look to certify people from other industries looking for a career in healthcare as two of the primary recruitment strategies.

Measure to promote retention:

- The applicant plans to provide competitive pay and benefits so that staff have a livable wage. They will offer healthcare, vacation time, a 401k, and provide opportunities for upward mobility and job growth. They report they will have manageable client caseloads and provide paid training.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).



**Project # 222238-E
Auburn Assisted Living LLC**

Program: LHCSA
Purpose: Establishment

County: Saratoga
Acknowledged: January 3, 2023

Executive Summary

Description

Auburn Assisted Living Services, LLC, a limited liability company, requests approval under Article 36 of the Public Health Law to become the operator of a Licensed Home Care Services Agency (LHCSA) currently operated by Northbrook Heights Home for Adults, Inc.

The LHCSA, to be known as Auburn Assisted Living Services, LLC, will be associated with the Assisted Living Program (ALP) to be operated by Auburn Assisted Living Services, LLC. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of the ALP located at 170 Murray Street Extension, Auburn, NY 13021.

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

**OALTC Recommendation
Contingent Approval**

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is proposing to only serve patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a photocopy of the amended and executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended and executed Amendment to the Operating Agreement, acceptable to the Department. [CSL]

Council Action Date

November 16, 2023

Program Analysis

Program Description

Auburn Assisted Living Services, LLC, requests approval for an Asset Purchase to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The LHCSA, to be known as Auburn Assisted Living Services, LLC, will be associated with the Assisted Living Program (ALP) to be operated by Auburn Assisted Living Services, LLC. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of the ALP from an office at 170 Murray Street Extension, Auburn, NY 13021.

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

Character and Competence Review

Auburn Assisted Living Services, LLC is comprised of the following individuals:

Avi Lustig - 100%

Operator and Administrator, Mariners Home Care, Inc.

Affiliations

- Silver Lake Support Services, Inc. (2001-Present)
- The Elliot Pearl House, LLC (January 2022-Present)
- Mariners Residence, Inc. (2013-Present)
- Mariners Home Care, Inc. (January 2019-Present)

The applicant has owned and/or worked in an assisted living facility, home care agency, and OASAS-approved facilities and is considered to have the experience to operate an Assisted Living Program.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home health agency.

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

Facility Compliance/Enforcement

The Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- The Elliot Pearl House, LLC d/b/a The Elliot Pearl House was fined \$100 pursuant to a Stipulation and Order for inspection findings on October 17, 2022, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Mariners Residence, Inc. was fined \$50 pursuant to a Stipulation and Order for inspection findings on September 13, 2021, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Mariners Residence, Inc. was fined \$50 pursuant to a Stipulation and Order for inspection findings on February 17, 2022, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Mariners Residence, Inc. was fined \$2,340 pursuant to a Stipulation and Order for inspection findings on September 11, 2017, and March 19, 2018, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is proposing to only serve patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Financial Review

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

Workforce Review

Current availability of professional/paraprofessional staff:

- The applicant is taking over an existing operating agency that serves the residents of the ALP associated with the agency; therefore, staff is projected to remain in place without change when the agency is approved.

Competing employers:

- The applicant's home care agency is part of a licensed ALP. Competing employers for home care workers are licensed agencies that require home visits. Home care workers have stated a preference for shift work under one roof in a facility rather than the sporadic contract work and travel required by home care agencies. Therefore, the applicant does not view any of the area agencies to be competitors and feels confident that the working conditions of a well-managed, attractive facility for these home care workers will provide a competitive edge in hiring and retention.

Training, recruitment, and workforce initiatives:

- The applicant reports that competitive salaries are offered at all levels of employment. Recruitment is ongoing, although the agency has had success with long-term retention of workers, so this is not perceived as an issue for the applicant. The applicant does not feel the need for coordination with local workforce initiatives or the Department of Labor for this reason.

Measures to promote retention:

- The applicant reports that competitive salaries are offered at all levels of employment, and the agency has had success with long-term retention of workers, so this is not perceived as an issue.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).



Project # 222220-E
Kris Agency And Home Care, Inc.

Program: LHCSA
Purpose: Establishment

County: Queens
Acknowledged: December 15, 2022

Executive Summary

Description

Kris Agency and Home Care, Inc., a business corporation that is a current Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law, requests approval to transfer 90.1% ownership interest from one current shareholder to another current shareholder.

Kris Agency and Home Care, Inc. was approved by the Public Health and Health Planning Council (PHHPC) on September 27, 1991, and the agency was subsequently licensed under license number 9220L001.

The current shareholders of Kris Agency and Home Care, Inc. are Mehadai Deoki (90.1%) and Parsana Deoki (9.9%). Upon approval of the requested transfer, Parsana Deoki will be the sole shareholder (100%).

The LHCSA currently serves residents of the following counties from an office at 169-14 Hillside Avenue, Jamaica, New York 11432.

- Bronx
New York
Queens
Nassau
Kings

The LHCSA provides the following healthcare services:

- Nursing
Health Aide
Personal Care

OALTC Recommendation
Contingent Approval

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator. Additionally, the applicant submitted a rebuttal to the presumption of no need in Nassau County, which the Department deemed acceptable.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a signed/executed copy of a stock purchase agreement that is acceptable to the Department. [CSL]

Council Action Date

November 16, 2023

Program Analysis

Project Description

Kris Agency and Home Care, Inc., request approval to transfer 90.1% ownership interest from one current shareholder to an existing shareholder.

The LHCSA serves the residents of the following counties from an office at 169-14 Hillside Avenue, Jamaica, New York 11432.

- Bronx
- New York
- Queens
- Nassau
- Kings

The LHCSA provides the following healthcare services:

- Nursing
- Health Aide
- Personal Care

Character and Competence

The proposed membership of Kris Agency and Home Care, Inc. is comprised of the following individual:

Parsana Deoki - 100%

Chief Operations Officer, Kris Agency and Home Care, Inc.

Affiliations

- Kris Agency and Home Care, Inc. (October 2021 – Present).

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home health agency.

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

Facility Compliance/Enforcement

The information provided by the 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 patients and to prevent recurrent code violations. The information provided by the Bureau of Emergency Medical Services indicated that Parsana Deoki held an EMT license (#495727), and there were no disciplinary actions taken against this individual or their license.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator. Additionally, the applicant submitted a rebuttal to the presumption of no need in Nassau County, which the Department deemed acceptable.

Financial Review

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

Workforce Review

Kris Agency and Home Care Inc. has specialized relationships in the veteran community, many of whom are underemployed. As an LHCSA in good standing, they employ over 100 caregivers, many of whom have over five years at the agency. This is a function of fair wages, good training, and word of mouth, which will also be assets when recruiting and hiring. Kris Agency provides ongoing training programs for their staff, including in-house in-service programs, refresher training that is part of the quality assurance program, and specialized training for Alzheimer's, dementia, TBI, mental health screening, and cultural sensitivity. The agency recruits at local training schools and has an approved New York State Department of Health Personal Care Aide training program. It also uses word of mouth, employee friend and family referrals, and local advertising.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).



Project # 222255-E
Riverside Select Services, LLC d/b/a
Cottage Homecare Services

Program: LHCSA
Purpose: Establishment

County: Nassau
Acknowledged: January 23, 2023

Executive Summary

Description

Riverside Select Services, LLC, a New York limited liability company, is requesting to become the new operator of Cottage Home Care Services, Inc., a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office at 25 Newbridge Road, Suite 302, Hicksville, New York 11801:

- Nassau
- Suffolk
- Queens
- Bronx
- Kings
- New York
- Richmond
- Westchester

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

**OALTC Recommendation
Approval**

Need Summary

In accordance with 10 NYCRR Section 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended

Council Action Date

November 16, 2023

Program Analysis

Program Description

Riverside Select Services, LLC d/b/a Cottage Homecare Services, a Limited Liability Company, seeks approval for an asset purchase of Cottage Homecare Services, Inc.

The applicant is proposing to serve the residents of the following counties from an office at 25 Newbridge Road, Suite 302, Hicksville, New York 11801:

- Nassau
- Suffolk
- Queens
- Bronx
- Kings
- New York
- Richmond
- Westchester

The applicant proposed to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

Character and Competence Review

Riverside Select Services, LLC d/b/a Cottage Homecare Services is comprised of the following individual:

Allen Stein – 100%

Managing Member, Sprain Brook Manor Rehab, LLC

Managing Member, L&A Operations LLC d/b/a Adira at Riverside Rehabilitation

Affiliations

- Sprain Brook Manor Rehab, LLC (2012 - Present)
- L&A Operations LLC d/b/a Adira at Riverside Rehabilitation & Nursing (January 2015 - Present)
- St. Camillus Stamford Opco, LLC [CT] (January 2020 – Present)
- Governor's House Simsbury Opco, LLC [CT] (January 2020 -Present)
- ABH Opco, LLC [CT] (January 2022 -Present)

Cottage Home Care in Hicksville, NY has been receiving management assistance from Allen Stein since 2020. His healthcare management skills qualify him to operate the proposed agency.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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

Facility Compliance/Enforcement

The Division of Quality and Surveillance for Nursing Homes has reviewed the compliance histories of the affiliated nursing homes and reports as follows:

- Adira at Riverside Rehabilitation & Nursing was fined \$2,000 pursuant to a stipulation and order from an August 18, 2021 survey for violations of Title18 NYCRR Part 415.19(a) and 415.19(b)(4).

Need Review

In accordance with 10 NYCRR Section 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

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

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Attachment A outlines their workforce goals.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Attachments

OALTC Attachment A	Workforce Review
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**Project # 231325-C
NYU Langone Hospitals**

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: July 24, 2023

Executive Summary

Description

NYU Langone Hospitals, an 813-bed not-for-profit hospital with four divisions, requests approval for an Ambulatory Radiation Oncology extension clinic at 210 Crossways Park Drive, Woodbury, NY (Nassau County). The new clinic will be housed in leased space and accommodate one New TrueBeam Linear Accelerator, one CT scanner, six exam rooms, and associated support spaces. The space will be built out with two vaults and control rooms for linear accelerators.

Currently, NYU provides radiation oncology services at two offices in Mineola, one on the NYU Langone Hospital-Long Island campus and the other at 264 Old County Rd.

This project will increase capacity, reducing wait times while treating more patients.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 2,772 visits in the first year and 3,346 by the third, with 16% Medicaid and 0.5% Charity Care in both years.

Program Summary

A favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

The total project cost of \$30,167,000 will be met with equity from hospital operations.

	<u>Year One</u>	<u>Year Three</u>
Budget:	(2024)	(2026)
Revenues	\$5,369,113	\$7,543,252
Expenses	<u>\$4,644,185</u>	<u>\$6,626,687</u>
Net Income	\$724,928	\$916,565

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project pursuant to Public Health Law §2802-b, as it was received by the Department on June 16, 2023.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]
3. Satisfactory response to SD review comment ID 20245 regarding clarification of proposed Soiled Workroom, intended on-site sterilization program as (2) room or (1), and requisite review document revisions. [DAS]

Approval conditional upon:

1. This project must be completed by **May 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **February 1, 2024**, and construction must be completed by **February 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

November 16, 2023

Need Analysis

Background and Analysis

The primary service area for this project is Nassau County, with some patients traveling from Suffolk and Queens Counties. The population of Nassau County is estimated to increase to 1,424,878 by 2028 per projection data from the Cornell Program on Applied Demographics (PAD), an increase of 2.4%. The 65+ population was 255,773 in 2021 and is expected to increase by 25.8% to 321,782 by 2028, according to PAD. The demographics for the service area are noted below, including a comparison with New York State:

Demographics	Nassau County	Suffolk County	Queens County	New York State
Total Population – 2021 Estimate	1,391,678	1,522,998	2,393,104	20,114,745
Hispanic or Latino (of any race)	17.2%	19.9%	27.9%	19.2%
White (non-Hispanic)	58.3%	66.4%	24.6%	54.7%
Black or African American (non-Hispanic)	11.0%	6.9%	16.8%	13.9%
Asian (non-Hispanic)	10.5%	4.0%	25.6%	8.6%
Other (non-Hispanic)	3.0%	2.7%	5.1%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

According to Data USA, the population of the Nassau, Suffolk, and Queens Counties had health coverage as follows:

	Nassau County (2020)	Suffolk County (2020)	Queens County (2018)
With Health Insurance	95.9%	95.82%	89.5%
Employer Plans	59.5%	58.3%	43.2%
Medicaid	10.1%	11.6%	25.9%
Medicare	13.5%	13%	9.8%
Non-Group Plans	12.6%	12.4%	10.3%
Military or VA	0.238%	0.501%	0.302%

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	26.8%	24.8%
Medicare	56.6%	58.2%
Medicaid	16%	16.4%
Private Pay	0%	0%
Charity Care	0.5%	0.5%
Other	0%	0%

The hospital is in the Long Island region, which currently has 26 approved or existing LINACs and has a determined need for 18 LINACs. The table below shows a need for 18 LINAC machines in the health planning region:

	LINAC Need In the Long Island Region	Total
1	Number of Cancer Cases per Year	18,931.20
2	60% will be Candidates for Radiation Therapy	11,358.72
3	50% of (2) will be Curative Patients	5,679.36
4	50% of (2) will be Palliative Patients	5,679.36
5	Course of Treatment for Curative Patients is 35 Treatments	198,777.60
6	Course of Treatment for Palliative Patients is 15 Treatments	85,190.40
7	The Total Number of Treatments [(5)+(6)]	283,968.00
8	Need for LINAC Machines ¹ [(7)/6,500]	43.69
9	Existing/Approved Resources	26
10	Remaining Need for LINAC Machines [(8)-(9)]	17.69

¹ Each LINAC Machine has capacity for 6,500 Treatments

NYU Langone Hospital Long Island has also applied to create a new Ambulatory Radiation Oncology, including LINAC machines, 10 miles away at 101 Mineola Boulevard, Mineola, New York 11501 (Nassau County), through submission of CON 231108.

Conclusion

Approval of this project will allow for expanded access to Ambulatory Radiation Oncology services for those who reside in and around Nassau County.

Program Analysis

Program Description

NYU Langone Hospitals, an existing 813-bed medical center located at 550 First Avenue in New York (New York County), seeks approval to certify and construct a new extension clinic to be located at 210 Crossways Park Drive in Woodbury (Nassau County). The extension clinic will be certified for Radiologic Therapeutic O/P and Medical Services-Other Medical Specialties. The extension clinic will provide one CT Scanner, two vaults and control rooms for linear accelerators, one new TrueBeam Linear Accelerator with the other vault built for future equipment needs, six exam rooms, and all associated support spaces.

The Applicant reports that they currently have two offices in Long Island, one on the main hospital campus and one in an extension clinic. The hospital location has one Cyberknife, one Linac, and one TrueBeam. The extension clinic has one Cyberknife and one 21EX. The current wait time for cancer patients needing services at these locations averages one or more weeks. Additionally, many of the patients requiring treatment are elderly and receive suboptimal times for treatment, very early in the morning or late in the evening, which adds further inconvenience with transportation and additional stress to their lives. Adding the additional outpatient capacity will facilitate decreased wait times.

Staffing is expected to grow by 11.0 FTEs in Year One and 16.0 FTEs in Year Three of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations, moveable equipment, and fees is estimated at \$30,167,000, broken down as follows:

Renovation and Demolition	\$18,000,000
Construction Contingency	\$700,000
Architect/Engineering Fees	\$1,400,000
Other Fees	\$2,012,796
Moveable Equipment	\$4,887,204
Telecommunications	\$3,000,000
CON Fee	\$2,000
Additional Processing Fee	<u>\$165,000</u>
Total Project Cost	\$30,167,000

The total project cost of \$30,167,000 will be met with equity from hospital operations. A review of BFA Attachment A, the Certified Financial Statements of NYU Langone Hospitals for the year ending August 31, 2022, indicates the availability of sufficient funds for the equity contribution.

Operating Budget

The applicant submitted an operating budget, in 2023 dollars, for the first and third years (2024 and 2026) for the extension clinic, summarized below:

Revenues:	<u>Per</u> <u>Proc.</u>	<u>Year One</u> <u>2024</u>	<u>Per</u> <u>Proc.</u>	<u>Year Three</u> <u>2026</u>
Commercial Fee for Service	\$5,364	\$3,987,729	\$6,870	\$5,712,181
Medicare Fee for Service	\$480	\$338,904	\$534	\$467,880
Medicare Managed Care	\$503	\$434,246	\$560	\$599,277
Medicaid Fee for Service	\$1,603	\$42,131	\$1,674	\$52,878
Medicaid Managed Care	\$1,549	\$648,272	\$1,594	\$826,477
Bad Debt		<u>(\$82,169)</u>		<u>(\$115,442)</u>
Total Revenues		\$5,369,113		\$7,543,252
Expenses:				
Operating	\$1,238	\$3,431,023	\$1,618	\$5,413,525
Capital	<u>\$438</u>	<u>\$1,213,162</u>	<u>\$362</u>	<u>\$1,213,162</u>
Total Expenses	\$1,676	\$4,644,185	\$1,980	\$6,626,687
Excess Revenues		\$724,928		\$916,565
Utilization: (Procedures)		2,772		3,346
Cost Per Procedure		\$1,676		\$1,980

The following is noted with respect to the operating budget:

- The hospital anticipates hiring 11 FTEs and 16 FTEs during the first and third years, respectively. The majority of the incremental FTEs are technicians, specialists, and registered nurses.
- Utilization assumptions are based on the historical experience of the hospital.
- The program is projected to perform 2,772 procedures in Year One and 3,346 procedures in Year Three.

- Revenue assumptions are based on the hospital's DRG (Diagnostic Related Group). The payer levels are based on the hospital's specific contractual rates by the payer.
- Expense assumptions are based on the historical experience of the hospital.
- The increase in operating expenses is due to the increase in utilization and utility expenses. The landlord was responsible for the utilities in Year One.

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

	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	26.81%	24.84%
Medicare FFS	25.48%	26.18%
Medicare MC	31.14%	32.01%
Medicaid FFS	0.94%	0.96%
Medicaid MC	15.08%	15.48%
Charity Care	<u>0.55%</u>	<u>0.53%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site that they are currently occupying, summarized below.

Date	December 20, 2022
Premises	210 Crossways Park Dr, Woodbury, NY
Lessor	210 TZ Property, LLC
Lessee	NYU on behalf of its NYU Grossman School of Medicine
Term	16-year term
Rental	\$510,870 base rent annually for years 1 and 2 and a 2.25% annual increase for year 3-16. Plus, the triple net provisions
Provisions	Triple Net

The applicant provided an affidavit indicating that there is no relationship between the lessor and the lessee.

Capability and Feasibility

Total project costs of \$30,167,000 will be met with equity from the hospital operations of NYU Langone Hospitals. Presented on BFA Attachment A are the August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$724,928 and \$916,564 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for oncology services. The submitted budget appears reasonable. As shown in Attachment A, the facility had an average positive working capital position and an average positive net asset position for the period August 31, 2021, and August 31, 2022. Also, the entity had an average gain from operations of \$606,913,000 for the period August 31, 2021, and August 31, 2022.

Presented as BFA Attachment B is the February 28, 2023, Internal Financial Statements of NYU Langone Hospitals. As shown, the entity maintained a positive working capital, positive net asset position, and a gain from operations of \$299,680,000 during the six months of operations.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals
BFA Attachment B	February 28, 2023, Internal Financial Statements of NYU Langone Hospitals



**Project # 231103-C
NYU Langone Hospital-Brooklyn**

Program: Hospital
Purpose: Construction

County: Kings
Acknowledged: May 16, 2023

Executive Summary

Description

NYU Langone Hospital (NYULH), a 2,073-bed not-for-profit hospital with four (4) divisions, requests approval for the certification of adult cardiac surgery services at NYU Langone Hospital-Brooklyn (NYULH-Brooklyn), a 444-bed facility in Sunset Park. Upon implementation of the proposed cardiac surgery program, NYULH will be capable of providing a full range of cardiac-related services in Kings County. These services include preventive and primary care through its ambulatory network and the Family Health Center at NYU Langone and complex interventions such as surgical valve procedures, coronary surgical and interventional procedures, and electrophysiology (EP) services at NYULH-Brooklyn.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 199 procedures in Year One and 326 procedures in Year Three, with 48.7% of those Medicaid and 2% Charity Care.

Program Summary

A favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Total project costs of \$840,099 will be met with cash from hospital operations.

<u>Budget:</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues	\$16,011,856	\$26,301,693
Expenses	<u>11,434,722</u>	<u>15,406,196</u>
Excess Revenues	\$4,577,134	\$10,895,497

Health Equity Impact Assessment

No Health Equity Impact Assessment is required for this project under Section 2802-B of the PHL, as it was received prior to the legislation's effective date.

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]

Approval conditional upon:

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

Council Action Date

November 16, 2023

Need Analysis

Background and Analysis

The primary service area is Kings County. NYULH-Brooklyn is in a Medically Underserved Area and Health Professional Shortage Area for Primary Care. The population of Kings County is projected to increase to 2,844,643 by 2028, based on Cornell Program of Applied Demographic estimates. Kings County's aged 65+ population was 382,678 in 2021 and is expected to increase to 460,838, an increase of 20.4% by 2028. Demographics of the primary service area are noted below, including a comparison with New York State.

Demographics	Kings County	New York State
Total Population – 2021 Estimate	2,712,360	20,114,745
Hispanic or Latino (of any race)	18.80%	19.20%
White (non-Hispanic)	36.70%	54.70%
Black or African American (non-Hispanic)	28.60%	13.90%
Asian (non-Hispanic)	11.70%	8.60%
Other (non-Hispanic)	4.20%	3.60%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, 93.3% of the population in Kings County had health coverage as follows:

Employer Plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-Group Plans	11.8%
Military or VA	0.327%

Below is the applicant's projected payor mix.

Projected Payor Mix for Inpatient Cardiac Services		
Payor	Year One	Year Three
Commercial	15.08%	15.03%
Medicare	34.17%	34.05%
Medicaid	48.75%	48.78%
Charity Care	2.01%	2.15%

Upon implementation of the proposed cardiac surgery program, NYULH will be capable of providing a full range of cardiac-related services in Kings County. These services include preventive and primary care through its vast ambulatory network and the Family Health Centers at NYU Langone (FHC), as well as complex interventions such as surgical valve procedures, coronary and interventional procedures, and electrophysiology (EP) studies at NYULH—Brooklyn.

Cardiac Surgery - Current Utilization

Statewide Cardiac Surgery Procedures					
Year	2018	2019	2020	2021	2022
Cardiac Surgery Procedures	18,317	17,988	13,572	15,345	13,974

Source: Cardiac Services Group, excludes Trans Catheter Aortic Valve Replacement (TAVR)

While the general statewide trend is toward fewer non-TAVR procedures, the COVID-19 pandemic and subsequent recovery obviously impacted 2020-21.

The table below provides the number of Kings County residents who received cardiac surgery within and outside the county.

Kings County Residents Treated for Cardiac Surgery Excluding TAVR					
Facility	2018	2019	2020	2021	2022
Maimonides Medical Ctr	452	404	321	367	244
NYP Brooklyn Methodist	152	122	56	123	70
Univ Hosp at Downstate	85	81	N/A	N/A	N/A
Treated in Kings County	689	607	377	490	314
Albany Med. Ctr	0	0	0	2	0
Univ. Hosp-Stony Brook	0	0	1	4	0
NYU Langone-Long Island	8	3	5	10	6
North Shore Univ Hosp	27	19	13	18	18
St. Francis Hospital	18	12	9	17	14
Good Sam - Suffern	1	0	0	0	0
South Shore Univ. Hosp	0	0	0	0	1
Good Sam Univ Hosp	1	3	0	1	0
Westchester Med Ctr	2	1	0	1	1
Montefiore - Moses	9	14	1	5	1
Bellevue Hospital Ctr	51	63	56	58	56
Lenox Hill Hospital	106	115	90	147	75
Mount Sinai Hospital	199	148	87	164	109
NYP NY Weill Cornell	118	97	67	126	99
NYU Langone Health	244	247	222	323	221
NYP Columbia Presby.	93	76	57	63	51
Mount Sinai Morningside	64	88	84	104	51
Long Island Jewish MC	0	1	0	0	0
NYP Queens	3	9	2	8	4
Staten Island Univ Hosp	10	9	11	7	7
Montefiore - Weiler	1	0	0	0	0
Treated Outside of Kings County	955	905	705	1,058	714
Total	1,644	1,512	1,082	1,548	1,028

Source: Cardiac Services Group, excludes TAVR

In 2022, 69.5% of Kings County residents in need of cardiac surgery underwent procedures at facilities outside of the county. The certification of Cardiac Surgery at NYU Langone Hospital - Brooklyn should reduce that out-migration, allowing a significant number of patients to receive treatment closer to home.

Neighboring Cardiac Surgery Centers in Kings County: Distance from NYU Langone Hospital		
Hospital	Distance (miles)	Travel Time (minutes)
Maimonides Medical Center	1.6	12 min
NYP Brooklyn Methodist	2.8	16 min

Source: Google Maps 2023 (Travel times displayed assume average travel conditions)

NYULH - Brooklyn Health Projections

NYU Langone Hospital - Brooklyn projects 199 cardiac cases in Year One, increasing to 326 cases in Year Three, thus exceeding the annual minimum of 100 procedures required by 10 NYCRR Section 405.29 – Cardiac Services and 300 procedures by the second year of operation required by 10 NYCRR Section 709.14.

Patient Volume Sources

NYULH-Brooklyn has listed the following as patient volume sources to support the projected volume:

- Patients who are transferred from the NYULH - Brooklyn campus to the Manhattan campus during an inpatient admission for cardiac surgery. (In 2022, NYULH-Brooklyn transferred 108 inpatients to NYULH–Manhattan for Cardiac Surgery.)

- Patients receiving scheduled cardiac surgery at the NYULH—Manhattan campus who reside in Brooklyn.
- Patients who travel from their home borough of Brooklyn to non-NYULH facilities in Manhattan for CABG surgeries and surgical valve procedures.

As seen in the table below and according to the applicant, since 2020, NYULH-Brooklyn has seen significant growth in cardiac services while maintaining 90% on-time procedures for cardiac catheterization and electrophysiology services.

NYULH-Brooklyn Current Cardiac Procedures, Source Applicant				
Year	2020	2021	2022	2023 Estimate
Percutaneous Coronary Intervention (PCI)	405	483	433	480
Diagnostic Catheterization	1,214	1,464	1,528	1,668
Total	1,619	1,947	1,961	2,148

To reach the underserved population of Brooklyn and reduce the out-migration of cardiac services, NYULH-Brooklyn will implement the following outreach services.

- Beyond Bridges - NYULH's community-wide health improvement initiative which aims to transform health for individuals and communities, including a cardiovascular disease workgroup.
- REACH FAR's Keep on Track Program - A train-the-trainer blood pressure monitoring program culturally and linguistically adapted for faith-based organization sites.
- Diabetes Research Education and Action for Minorities (DREAM) Initiative - leverages partnerships with PCPs across NYC, including in Brooklyn, to implement and evaluate an intervention to prevent and manage Type 2 diabetes in the South Asian community.

Conclusion

The addition of Cardiac Surgery at NYULH-Brooklyn will serve an area with high out-migration for those services.

Program Analysis

Project Proposal

NYU Langone Hospital-Brooklyn (NYULH-Brooklyn), a 444-bed academic medical center located at 150 55th Street in Brooklyn (Kings County), requests approval to certify Cardiac Surgery - Adult. NYU Langone is already certified for Cardiac Catheterization Adult Diagnostic, Cardiac Catheterization- Percutaneous Coronary Intervention, and Electrophysiology Services. NYULH-Brooklyn recently expanded the Cardiac EP services and saw a volume increase of 148% from CY20 to CY22.

Additionally, NYULH-Brooklyn provides heart failure advanced care to residents of Brooklyn through its Heart Failure Advanced Care Center in Midwood. NYULH-Brooklyn also provides Cardiac Rehabilitation to the Brooklyn residents at the Rusk Rehabilitation Center. Patients who are recovering from heart attacks and other cardiac events are provided care at this facility. Patients who receive cardiac surgery will be referred to the cardiac rehabilitation center as part of their discharge plan.

The Cardiac Program will be implemented under the direction of the Department of Cardiothoracic Surgery at the NYU Grossman School of Medicine through the NYU Langone Heart program. NYU Langone Manhattan's Cardiac Program care quality was implemented under this direction and has undergone marked improvement between 2019 and 2022, seeing a 30% reduction in mortality and an 11% reduction in length of stay. NYULH-Brooklyn's proposed cardiac surgery program will implement the same shared leadership, policies, and procedures.

NYULH-Brooklyn already has the existing OR and ICU infrastructure and capacity to accommodate cardiac surgery patients. There are two (2) ORs identified as the best physical location to handle these surgeries, being in close proximity to the pre-operative care unit and the ICU. NYULH has a network of cardiologists and other referring providers through its FGP and clinically integrated network to promote better clinical outcomes and knowledge sharing. The implementation of the program will be supported by physicians and administration who work in existing cardiac surgery programs, namely NYULH Manhattan. NYULH-Brooklyn projects to treat 199 patients in Year One of the program and 326 patients in Year Three. The program will be clinically led by the Chief of Adult Cardiac Surgery and the Clinical Director of Cardiology at NYULH. The facility expects 23.7 FTEs at project completion in Year One and 33.6 FTEs in Year Three.

Anticipated Cardiac Surgery Program Staffing

Cardiac Surgeons will be provided by NYULH-Manhattan. The cardiac surgery program will require 23.7 Full-Time Equivalents in Year 1:

Operating Room

- Registered Nurse 2.3 FTEs
- Surgical Technician 1.2 FTEs
- Perfusionist 2.0 FTEs
- Operating Room Coordinator 1.0 FTE

Intensive Care Unit

- Registered Nurse 5.7 FTEs

Provider Staffing

- Physician Assistant 6.5 FTEs

Program Administration

- Patient Coordinator 1.0 FTE
- Quality/Data Analyst 1.0 FTE

Other Support Staffing

- Respiratory Therapy 1.0 FTE
- Blood Bank Technician 1.0 FTE
- Case Manager 1.0 FTE

The Applicant has submitted a written plan that demonstrates their ability to comply with all the standards for Cardiac Surgery, and they have assured the Department that their program will meet all the requirements of 405.29 and 709.14.

Prevention Agenda

The NYU Langone Hospital-Brooklyn, a member of NYU Langone Health, is requesting approval to implement a “Cardiac Surgery - Adult” service at NYU Langone Hospital-Brooklyn (NYULH-Brooklyn), which will provide a full range of cardiac-related services in Sunset Park, Kings County. Service includes preventive and primary care, and complex interventions such as surgical valve procedures, coronary surgical and interventional procedures, and electrophysiology (EP) studies. The proposed program will improve access to high-quality cardiac surgery services and reduce cardiovascular risk factors and disparities in access to care.

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

- Preventing Chronic Diseases
- Promote Healthy Women, Infants, and Children

The proposed project will advance the Prevention Agenda priority selected by NYU Langone Hospital-Brooklyn to improve the management of cardiovascular disease and other chronic diseases in high-risk populations, thereby preventing chronic diseases.

In 2020, NYU Langone Health spent \$ 32,245,843 on community health improvement services, representing 0.51% of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for the acquisition of moveable equipment and CON Fees, is estimated at \$840,099, broken down as follows:

Moveable Equipment	\$833,515
CON Fees	2,000
Additional Processing Fee	<u>4,584</u>
Total Project Cost	\$840,099

The applicant will meet the total project cost with equity from hospital operations.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Revenues:				
Commercial Managed Care	\$152,261	\$4,567,825	\$153,087	\$7,501,266
Medicare Fee for Service	\$79,055	2,845,969	\$79,216	\$4,673,728
Medicare Managed Care	\$79,875	2,555,987	\$80,842	\$4,203,771
Medicaid Fee for Service	\$49,599	694,385	\$49,589	\$1,140,543
Medicaid Managed Care	\$64,430	<u>5,347,690</u>	\$64,576	<u>\$8,782,385</u>
Total Revenues		\$16,011,856		\$26,301,693
Expenses:				
Operating	\$57,150	\$11,372,911	\$47,069	\$15,344,385
Capital	<u>\$311</u>	<u>61,811</u>	<u>\$190</u>	<u>\$61,811</u>
Total Expenses	\$57,461	<u>\$11,434,722</u>	\$47,258	<u>\$15,406,196</u>
Excess Revenues		\$4,577,134		\$10,895,497

The following is noted with respect to the operating budget:

- The hospital anticipates hiring 23.7 FTEs and 33.6 FTEs during the first and third years, respectively. The majority of the incremental FTEs are technicians and specialists, physician assistants, and registered nurses.
- Utilization assumptions are based on the historical experience of the hospital.
- The program is projected to perform 199 cardiac surgery procedures in Year One and 326 in Year Three.
- Revenue assumptions are based on the hospital's DRG, and payer levels are based on the hospital's specific contractual rates by payer.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Commercial Managed Care	15.08%	15.03%
Medicare Fee for Service	18.09%	18.10%
Medicare Managed Care	16.08%	15.95%
Medicaid Fee for Service	7.04%	7.06%
Medicaid Managed Care	41.71%	41.72%
Charity Care	<u>2.01%</u>	<u>2.15%</u>
Total	100.00%	100.00%

Capability and Feasibility

Total project costs of \$840,099 will be met with equity from hospital operations of NYU Langone Hospitals. Presented as BFA Attachment A are the August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$4,577,134 and \$10,895,497 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for cardiac surgery services. The submitted budget appears reasonable. As shown in Attachment A, the facility had an average positive working capital position and an average positive net asset position for the periods August 31, 2021, and August 31, 2022. Also, the entity had an average gain from operations of \$606,913,000 for the periods August 31, 2021, and August 31, 2022.

Presented as BFA Attachment B is the February 28, 2023, internal financial statements of NYU Langone Hospitals. As shown, the entity maintained a positive working capital, positive net asset position, and a gain from operations of \$299,680,000 during the 6 month of operations.

Conclusion

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

Attachments

BFA Attachment A	August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals.
BFA Attachment B	February 28, 2023 Internal Financial Statements of NYU Langone Hospitals



Project # 231369-E
Westside Ambulatory Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: New York
Acknowledged: July 21, 2023

Executive Summary

Description

Westside ASC, LLC (Westside), a New York State limited liability company, seeks approval to establish a multi-specialty freestanding ambulatory surgery center (ASC) at 450 West 31st Street, New York (New York County). Westside will share leased space in a temporal separation arrangement with Hudson Yards Surgery Center, LLC. The proposed operator of the ASC is also the owner/operator of Hudson Yards Surgery Center. Upon PHHPC approval, the ASC will be known as Westside Ambulatory Surgery Center.

The ASC will specialize in podiatry, pain management, and general surgical services, consisting of three (3) operating rooms. Westside will operate only on Friday and Saturday when Hudson Yard Surgery Center, LLC is closed.

Westside ASC, LLC's sole member is John Khadem, M.D., the Medical Director and the sole member/manager of Hudson Yards ASC, LLC. Hudson Yard Surgery Center, LLC has a transfer and affiliation agreement with Mount Sinai Beth Israel. Dialogue with the hospital has already commenced, and The applicant is working with Mount Sinai Beth Israel to include Westside in this agreement. Mount Sinai is approximately three (3) miles away from the ASC.

OPCHSM Recommendation

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

Need Summary

The applicant projects 900 procedures in Year One and 1,069 in Year Three, with Medicaid at 10% and Charity Care at 2%.

Program Summary

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

Financial Summary

The total project cost for renovation and movable equipment is \$72,385. The total project cost will be paid from member equity.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows: Revenues (\$1,233,780 vs \$1,418,848), Expenses (959,317 vs 1,176,014), Net Income/(Loss) (\$274,463 vs \$242,834).

Health Equity Impact Assessment

The was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on Tuesday, June 20, 2023.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement that 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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
2. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
3. Submission of an executed Lease Agreement acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of 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 entities will operate at two separate times; there will be no overlap in hours. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other entities, with hours of operation of each program clearly identified. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. Medical records will be separately maintained for each entity. [HSP]

Council Action Date

November 16, 2023

Need Analysis

Background and Analysis

The service area consists of the Chelsea and Clinton neighborhoods (zip codes 10001, 10011, 10016, and 10018) in New York County. The population of New York County is projected to increase to 1,720,649 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York County and New York State.

Demographics	Primary Service Area	New York County	New York State
Total Population-2021 Estimate	143,654	1,669,127	20,114,745
Hispanic or Latino (of any race)	13.9%	25.6%	19.2%
White (non-Hispanic)	61.8%	46.7%	54.7%
Black or African American (non-Hispanic)	4.7%	12.1%	13.9%
Asian(non-Hispanic)	15.0%	11.8%	8.6%
Other (non-Hispanic)	4.6%	3.7%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2020, 94.2% of the population of New York County had health coverage as follows:

Employer Plans	51.5%
Medicaid	20.5%
Medicare	9.7%
Non-Group Plans	12.2%
Military or VA	0.315%

The applicant projects 900 procedures in Year One and 1,069 in Year Three with Medicaid at 10% and Charity Care at 2% in Year Three. These projections are based on the current practices of participating surgeons. The applicant states that of the procedures moving to this center, 54% are currently being performed in other ambulatory surgery centers, 14% in a hospital setting, and 32% in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	207	23%	246	23%
Commercial MC	315	35%	374	35%
Medicare FFS	234	26%	278	26%
Medicaid FFS	45	5%	53	5%
Medicaid MC	45	5%	53	5%
Private Pay	36	4%	43	4%
Charity Care	18	2%	22	2%

The table below shows the number of patient visits for relevant ASCs in New York County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Multi	East Side Endoscopy & Pain Management Center	6,038	9,269	9,092
Multi	Fifth Avenue Surgery Center	3,464	3,637	3,632
Multi	Fifth Avenue Surgery Center (opened 7/20/21)	N/A	1,452	4,461
Multi	Gramercy Surgery Center	3,521	4,582	5,726
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	0
Multi	Manhattan Surgery Center	4,091	4,799	4,788
Multi	Midtown Surgery Center	2,449	1,765	2,047
Multi	NY Center for Ambulatory Surgery	480	934	1,042
Multi	Surgicare of Manhattan	2,878	2,665	3,321
Multi	Surgicare of Westside (opened 12/16/20)	N/A	156	453
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	434
Total Visits		22,921	29,259	34,996

Westside ASC, LLC will be in the same building as Hudson Specialty Surgery Center, which operates as a freestanding single specialty (ophthalmology) surgery center. The goal is to ensure the most programmatic and economically efficient use of the space for specialties other than the eye. Westside will operate on Friday and Saturday as Hudson Specialty Surgery Center will be closed on these days. The hours of operation will be from 9 am to 5 pm.

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Affinity, BCBS Medicaid, Fidelis, Healthfirst, HIP, Metro Plus, and United Community Plan. The center will work collaboratively with local Federally Qualified Health Centers such as Urban Health Plan, The Institute for Family Health, and Bedford Stuyvesant Family Health Center to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

Conclusion

Approval of this project will provide increased access to podiatry, pain management, and general surgery services in an outpatient setting for the residents of New York County.

Program Analysis

Project Proposal

Westside ASC, LLC is requesting approval to establish an Article 28 Diagnostic and Treatment Center for ambulatory surgery to be located at 450 West 31st Street, New York, New York 10001. The program will be housed in the same facility as Hudson Yards, ASC. A temporal separation will be in effect between the two entities with separate signage, different staff, and operating hours.

Proposed Operator	Westside ASC, LLC
Doing Business As	Westside Ambulatory Surgery Center
Site Address	450 West 31st Street New York, NY (New York County)
Surgical Specialties	Multispecialty-Podiatry, Pain Management, General Surgery
Operating Rooms	3 total – 1 (class A) and 2 (class B)
Procedure Rooms	0
Hours of Operation	Friday and Saturday, 9 am – 5 pm initially. Hudson Yards LLC will not be open as indicated.
Staffing (1st Year / 3rd Year)	3.95 FTEs / 5.8 FTEs
Medical Director(s)	John J. Khadem, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is expected to be provided by: Mt. Sinai Beth Israel Hospital 3 miles/13 minutes
On-call service	The surgeons will either use MAP communications (which is in place from Hudson Yards Surgery Center), or they will utilize answering services which they already have relationships with.

Character and Competence

The sole member/manager of Westside ASC, LLC is:

<u>Name</u>	<u>Ownership Interest</u>
John J. Khadem, MD	100%

Dr. Khadem is a board-certified practicing ophthalmologist in private practice. Dr. Khadem earned both his medical degree and a Master's in Public Health from Columbia University. In addition, he has completed several clinical, research, and surgical fellowships and has 25 years of experience in the field of ophthalmology.

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 Hudson Yards Surgery Center (PFI 10423). Dr. Khadem discloses five (5) lawsuits, three (3) are medical-related. 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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Integration with Community Resources

The Center will ensure that patients have access to general medical/surgical hospitalizations, tertiary level of care requirements, obstetrical services, cardiac diagnostic testing, emergency room, and laboratory services through a transfer and affiliation agreement with Mount Sinai Beth Israel Hospital, as needed. Outreach to the community with comprehensive marketing and advertising plans and identifying areas that can best serve the public's needs. Charity care will be provided at least 2% per financial projections.

The applicant intends to utilize an Electronic Medical Record, NextGen Healthcare. The facility will not be a part of an Accountable Care Organization (ACO). The facility will investigate the possibility of participating in the Regional Health Information Organization (RHIO)/Health Information Exchange (HIE).

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project costs for renovation and movable equipment are estimated at \$72,385 and detailed as follows.

Other Fees	\$35,000
Movable Equipment	\$35,000
Application Fee	\$2,000
Processing Fee	<u>\$385</u>
Total Project Cost	\$72,385

The applicant's financing plan appears as follows:

Equity from member net worth as shown in Attachment A \$72,385

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$1,903.61	\$394,048	\$1784.46	\$438,828
Commercial MC	\$875.36	501,880	\$1,529.54	\$572,385
Medicare FFS	\$612.60	298,260	\$1,274.62	\$354,333
Medicaid FFS	\$549.65	57,358	\$1,274.62	\$68,141
Medicaid MC	\$507.01	57,538	\$1,274.62	\$68,141
Private Pay	\$1,221.45	36,709	\$1,019.69	\$43,610
Deductions Revenue		<u>(\$111,833)</u>		<u>(\$126,591)</u>
Total Revenue		<u>\$1,233,780</u>		<u>\$1,418,848</u>
Expenses:				
Operating	\$873.01	\$785,707	\$937.70	\$2,144,360
Capital	<u>192.90</u>	<u>173,610</u>	<u>162.40</u>	<u>173,610</u>
Total	\$1,065.91	\$959,317	\$1,100.11	\$1,176,014
Cost per Visit:				
Net Income / (Loss)		<u>\$274,463</u>		<u>\$242,834</u>
Total Visits		900		1,069
Cost per Visit		\$1,065		\$1,100

The following is noted with respect to the submitted budget:

- The basis of revenues, expenses, and projected utilization for this project is based on the experience of similar ASCs in New York State and the experience of the surgeons currently performing these near the stated facility.
- Projections indicate that 3.95 FTEs and 5.80 FTEs will be needed in Years One and Year Three, respectively.
- Four (4) M.D.s submitted letters of intent to perform surgeries at the ASC. Utilization projections include Dr. Julian Sosner, M.D. (Pain Management Specialist), who presently performs 480 surgical procedures a year at Mount Sinai. Abdalla Adam, MD, also sent a letter of intent, who has admitting privileges at Kingsbrook Jewish Medical Center and Brookdale Hospital, proposing to perform approximately 780 surgical procedures for Westside. Jian Zhang, DPM (Podiatrist), has submitted a letter of intent to perform approximately 120 surgical procedures per year and currently has admitting privileges at Montefiore Hospital. Also, Daniel Rosen, M.D., is the general surgeon.

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor:</u>	<u>Years One and Three</u>
Commercial FFS	23%
Commercial MC	35%
Medicare FFS	26%
Medicaid FFS	5%
Medicaid MC	5%
Private Pay	4%
Charity	<u>2%</u>
Total	100%

Sublease Rental Agreement

The applicant has submitted a draft sublease rental agreement for the site, which is summarized below:

Date:	TBD
Premises:	(The Premises currently what Hudson Yards occupies.)
Lessor:	Heykal Properties, LLC
Lessee:	Hudson Yards Surgery Center, LLC
Sublessee:	Westside ASC, LLC
Term of Lease:	(10) Ten Years commencing the first week when non-contingent approval from the Department of Health approves with all contingencies satisfied.
Rental Amount:	\$69,264 annually
Provisions:	Subleased space will be subject to only the limited date the sublessee when Hudson Yards Surgery Center, LLC is closed. Tenant shall not erect or post signs without the written consent of the landlord.

The space is already being used for Article 28 ASC space and will remain unchanged except for adding specific additional services in the same exact space. The original lease has been approved by the Department for Hudson Yards Surgery Center, LLC in 2020, and the conditions outlined in the original lease will continue. Two (2) letters of rent reasonableness have also been submitted from licensed NYS realtors. An executed affidavit has been provided stating the lease is a non-arm's length agreement, Lessor and Lessee are the same.

Capability and Feasibility

Total project costs of \$72,385 for movable equipment and renovations will be funded through member equity. Working capital requirements are estimated at \$196,002, based on two months of third-year expenses. Attachment A is the sole member's net worth, showing sufficient equity to fund total project costs and working capital.

Attachment B Westside ASC's Pro Forma Balance Sheet shows the operation will have \$268,387 in equity as of the first day of operations. The submitted budget projects a net income of \$274,463 in Year One and \$242,834 in Year Three. Revenues are based on prevailing reimbursement methodologies and contracted rates for this newly existing service compared to other diagnostic and treatment center services. The budget appears reasonable.

Attachment C presents Westside's proposed organization chart after PHHPC approval.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Westside ASC – Pro Forma Balance Sheet
BFA Attachment C	Proposed Organizational Chart of Westside ASC, LLC



**Project # 231380-B
Mohawk Valley Surgery Center**

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment and Construction **Acknowledged:** July 21, 2023

Executive Summary

Description

Mohawk Valley Ventures, LLC (MVV) d/b/a Mohawk Valley Surgery Center, an existing limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgical center (ASC) specializing in dentistry, general surgery, obstetrics, orthopedic surgery, plastic surgery, podiatry, urology, and vascular surgery. The Center will have four (4) operating rooms and be in leased space at 601 State Street, Utica, New York.

Mohawk Valley Health Services (MVHS) is the sole member of MVV. MVHS is also the sole corporate member of Faxton-St. Luke's Healthcare, St. Elizabeth Medical Center, St. Luke's Home Residential Health Care Facility, Inc., Senior Network Health, LLC, Visiting Nurse Association of Utica and Oneida County, Inc., and Mohawk Valley Health System Foundation. The proposed center will have a transfer and affiliation agreement with MVHS (Faxton St. Luke's Healthcare St Luke's Division and eventually with Wynn Hospital) to provide backup and emergency services to the Center. Nils-Tomas Dalager McBride, M.D. will serve as the Center's Medical Director.

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,596 procedures in Year One and 3,209 in Year Three, with Medicaid at 23.03% and Charity Care at 2.03% by Year Three.

Program Summary

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

Financial Summary

The total project cost of \$15,115,379 will be met with equity from the applicant's sole member, Mohawk Valley Health System.

	Year One (2026)	Year Three (2028)
Budget:		
Revenues	\$7,019,772	\$9,136,899
Expenses	<u>7,263,099</u>	<u>8,097,506</u>
Net Income (Loss)	(\$243,327)	\$1,039,393

Health Equity Impact Assessment

No Health Equity Impact Assessment was required for this project under Section 2802-B of the PHL as it was received by the Department prior to the legislation's effective date.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **August 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 1, 2024**, and construction must be completed by **May 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

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

Council Action Date
November 16, 2023

Need Analysis

Background and Analysis

The service area consists of Oneida County. The address is within a Health Professional Shortage Area for primary care, dental, and mental health and is also located within a Medically Underserved Area. The population of Oneida County is projected to decrease to 228,293 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service are noted below, including a comparison with New York State.

Demographics	Oneida County	New York State
Total Population-2021 Estimate	232,034	20,114,745
Hispanic or Latino (of any race)	6.2%	19.2%
White (non-Hispanic)	81.1%	54.7%
Black or African American (non-Hispanic)	5.7%	13.9%
Asian (non-Hispanic)	4.0%	8.6%
Other (non-Hispanic)	2.9%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2020, 96.2% of the population of Oneida County had health coverage as follows:

Employer Plans	46.7%
Medicaid	22.4%
Medicare	14.1%
Non-Group Plans	11.6%
Military or VA	1.35%

Based on volumes at the current practices of participating surgeons, the applicant projects 2,596 procedures in the first year and 3,209 by the third, with Medicaid at 20.03% and Charity Care at 2.03%. The applicant states that all of the procedures moving to this center are currently being performed in a hospital. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	920	35.44%	1,137	35.43%
Medicare FFS	445	17.14%	550	17.14%
Medicare MC	522	20.11%	645	20.10%
Medicaid FFS	11	0.42%	13	0.41%
Medicaid MC	588	22.65%	726	22.62%
Charity Care	51	1.96%	65	2.03%
Other	59	2.27%	73	2.27%

Mohawk Valley Health System is the sole member of Mohawk Valley Ventures. During 2022, MVHS performed 4,080 surgery cases that did not require an overnight stay for patients. MVHS has committed to right-size the number of operating rooms in the new acute care hospital and to shift cases to an outpatient setting as appropriate. Therefore, it is anticipated that approximately 1,350 cases, in addition to the 2,177 cases committed by the surgeons, will be shifted to the proposed ambulatory surgery center.

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Beacon, CDPHP, Excellus, Fidelis, MVP, Cigna, United Healthcare, and WellCare/Todays Options. The center will work collaboratively with local Federally Qualified Health Centers, local family shelters, and homeless shelters to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Oneida County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Multi	Apex Surgical Center	3,367	4,397	4,871
Multi	Griffiss Surgery Center	7,956	9,602	9,921
Multi	OMNI Surgery Center ¹	2,499	2,772	2,556
Total Visits		13,822	16,771	17,348

¹ 2021 & 2022 are an estimation based on partial year data.

Conclusion

Approval of this project will provide improved access to dentistry, general, obstetrics, orthopedic, plastic, podiatry, urology, and vascular surgery services in an outpatient setting for the residents of Oneida.

Program Analysis

Project Proposal

Mohawk Valley Ventures, LLC d/b/a Mohawk Valley Surgery Center, an existing limited liability company, seeks approval to establish and construct a multi-specialty freestanding ambulatory surgery center specializing in Dentistry, General Surgery, Obstetrics, Orthopedic Surgery, Plastic Surgery, Podiatry, Urology, and Vascular Surgery to be located on the third floor at 601 State Street, Utica, New York 13502 (Oneida County).

Proposed Operator	Mohawk Valley Ventures, LLC
Doing Business As	Mohawk Valley Surgery Center
Site Address	601 State Street Utica, New York 13502 (Oneida County)
Surgical Specialties	Multi-specialty ASC Dentistry General Surgery Obstetric Orthopedic Surgery Plastic Surgery Podiatry Urology Vascular Surgery
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday to Friday, 7 am to 5 pm. As the center matures, it is expected to expand the schedule to weekend and/or evening procedures if needed.
Staffing (1st Year / 3rd Year)	17.4 FTEs / 19.9 FTEs
Medical Director(s)	Nils-Tomas Dalager McBride, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is provided by: Mohawk Valley Health System (Faxton-St. Lukes Healthcare - St. Luke's Division) and eventually Wynn Hospital.
On-call service	Patients who require assistance during off-hours will have a phone number of an on-call service, which will be available 24/7 to immediately refer the patient to the Center's on-call physician, who will be a member of the Center's credentialed medical staff.

Mohawk Valley Health System is the sole member of MVV. MVHS has planned for the Wynn Hospital project to shift cases to the outpatient setting as appropriate. It is anticipated that approximately 1,350 of these cases and 2,177 cases committed to by the surgeons will be shifted from MVSC to be located across the street from the Wynn Hospital (total of 3,527 cases). There should be no negative impact on the other existing ASCs due to shifting the existing surgical volume from the hospital campus to the proposed new site.

Character and Competence

The ownership of Mohawk Valley Ventures, LLC d/b/a Mohawk Valley Surgery Center is:

Member Name	Proposed Interest
Mohawk Valley Health System	100.00%

MVHS has assigned three representatives as the Board of Managers for MVV: Darlene Stromstad, Louis Aiello, and Jerome Dayao. They will have full oversight and authority over MVV.

Catherine Brownell has been the Chair of Nursing at LeMoyne College since 2018. She has prior work experience as an Associate Professor of Nursing at Utica College. She serves as a member of the Board of Directors for Mohawk Valley Health Systems. She is an RN with the State of New York and has received her Ph.D. from Binghamton University.

Andrew Kowalczyk, III, is a lawyer in New York State. He has worked at Kowalczyk & Deery LLP since 2012 as an attorney and partner. He received a JD degree from Albany Law School and a BA from St. Lawrence University. He practices Real Property, Banking, Business, Corporate, Limited Liability Companies, and General Commercial law. He serves as a member of the Board of Directors/Trustees at Faxton-St. Luke's Hospital, St. Elizabeth Medical Center, and Mohawk Valley Health Systems.

Gregory McLean is currently the president, owner, and Co-Founder of Caruso McLean & Co. Inc. since 1988. He received a bachelor's degree in Business Management from Siena College, then went on to a graduate degree at The Lally School of Management RPI and the University of Dubuque Theological Seminary. He has a series of licenses, including insurance. He is a Member of the Board of Directors at Mohawk Valley Health Systems.

Darlene Stromstad is currently the CEO of Mohawk Valley Health System in Utica, NY, since 2019. Prior to that, she worked for Fenway Health System in Boston, MA, as interim CEO and for Waterbury Hospital as CEO from 2011-2017. She received her most recent degree, a BA from the University of New Hampshire in NH. She holds a position as a member of the Board of Directors at Mohawk Valley Health Systems.

Catherine Cominsky has worked as Senior Managing Director of Fundraising at Direct Mail Solutions since 2011. She received an Educational Leadership and Instruction for Inclusive Classroom degree in 2003 and holds a BS in Business Administration. She is a Member of the Board of Directors at Mohawk Valley Health Systems.

Norman Siegel was a judge for the NYS Court of Claims since 2010 and retired in 2017. He received a BA at Colgate University and a Law degree from Albany Law School. He held a license as an attorney from 1967-2018. He is the Chair and member of the Board of Directors at St. Elizabeth Medical Center. He is also a member of the Board of Directors and Trustee at St. Elizabeth Medical Center and Mohawk Valley Health System.

Symeon Tsoupelis is the owner of Symeon's Greek Restaurant, Inc. since 2002. He has a BS from Providence College. He serves as a Member of the Board of Directors of Mohawk Valley Health Systems.

Domenic Aiello is a physician in the states of NY and PA. Board certified in Endocrinology, Metabolism, and Diabetes since 1991 and Internal Medicine since 1990. He received his medical license in Mexico and underwent a Fifth Pathway Program at SUNY Buffalo. He did postgraduate training at M.S. Hershey Medical Center for a fellowship in Endocrinology. His most recent practice has been in clinical Endocrinology in New Hartford, NY, since 2002. He also has teaching appointments at Faxton-St. Lukes Healthcare since 2000, St. Elizabeth's Medical Center since 1989, and SUNY in Syracuse since 1989. He serves as a Member of the Board of Directors of Mohawk Valley Health Systems.

Gregory Evans has worked at the Indium Corporation in Utica, NY, from 1981 to the present. He has served as CEO since 2017, as President from 1996 – 2017, and held other positions at the company previously. He received his most recent degree, an MBA from RPI in Troy, NY. He currently serves as a trustee emeritus at Utica Zoological Society. He is a member of the Board of Directors at Utica First Insurance Company and the Board of Directors (Chair) at Mohawk Valley Health Systems.

Lauren Bull was president and CEO from 1971-2019 of Bull Bros. Inc. in Utica. She is currently retired. She serves as a member of the Board of Directors of Mohawk Valley Health Systems.

Jonathan Block is a physician and has worked since 2000 at U.S. Urology Partners. He holds a medical license in NY State and is board-certified in Urology and Obesity Medicine. He graduated from Albany Medical Center for Urology and General Surgery and did an internship in General Surgery at Albany Medical Center. He serves as a member of the Board of Directors of Mohawk Valley Health Systems.

Louis Aiello has worked at Mohawk Valley Health System since 2014 as Senior VP and CFO. Prior to that, he worked at St. Elizabeth Medical Center as CFO and VP of finance. Mr. Aiello graduated from Utica College of Syracuse and holds a CPA. He has affiliations with the Healthcare Financial Management Association since 1995. He has outside Board memberships at United Iroquois Shared Services, Inc., Junior Junction Inc., Healthcare Underwriters Mutual Risk Management Group Compensation Trust, St. Elizabeth Health Support Services, and Frankfort Little League.

Jerome Dayao has been a Nurse Practitioner in New York State since 2018. He graduated from The University of California, Los Angeles with a Doctorate. He currently works as Senior VP and CNO for Mohawk Valley Health Systems since 2017. Prior to that, he had worked as Senior Associate Administrator and CNO from 2019-2022 at the University of Washington Medical Center. Where he oversaw all nursing practices. Mr. Dayo will serve as a board member for the ASC.

Barbara Brodock has been self-employed since 2002. She has held licensure as an insurance agent in NY and PA. She was the owner and president of CBB Realty, LLC for 20 years. She is a member of the Board of Directors at Mohawk Valley Health System.

Richard Tantillo is currently a Senior Philanthropy Advisor since 2017 at Hamilton College. Prior to that, he was VP of communications and development since 1994 at Hamilton College. He has assisted the Mohawk Valley Health System in several areas, especially Board governance. He is a member of the Board of Directors at Mohawk Valley Health System.

Sushma Kaul is a physician licensed in New York State. She earned her medical degree in India and completed a fellowship in critical care medicine at Albert Einstein College of Medicine and a fellowship in pulmonary disease from St. Luke's Roosevelt. She has worked since 2016 at Mohawk Valley Health System as Medical Director of ICU and an attending physician in pulmonary and critical care medicine. Prior to this, she worked in private practice for Pulmonary and Critical Care Associates, LLP. She has been a voting member of the Mohawk Valley Health System Board since 2019.

Nils-Tomas McBride is a physician in NY State and the proposed Director of the ASC. He completed his education at St. George's University in 2013 and his residency at Easton Hospital until 2019. In 2020, he completed a fellowship from Virginia Commonwealth University in Cardiothoracic Surgery. He was out of work from 2020-2021 due to the pandemic. He was an attending physician since 2021 at Slocum Dickson Medical Group, then became an MD/Surgeon at Mohawk Valley Health System in April of 2023. Dr. McBride with late disclosure of ongoing malpractice suit.

Karen Leach is currently the VP of administration and finance since 2001 at Hamilton College. She has a master's in business administration from Syracuse University. She currently serves on the Board of Directors at Mohawk Valley Health System.

Joan Compson has worked as a certified public accountant but is now retired since 2012. She is a member of the Board of Directors at Mohawk Valley Health System.

Richard Zweifel most recently graduated from Clarkson University. He is licensed as a certified professional accountant. He has worked for Bonadio & Co., LLP since 2012 as a CPA in Utica. He is a member of the Board of Directors at Mohawk Valley Health System. He discloses a Class A misdemeanor in 1980, unrelated to health care.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office

of Professional Medical Conduct, and the Education Department databases, as well as the U.S. 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.

Integration with Community Resources

MVHS has committed to right-size the number of operating rooms in the new acute care hospital (Wynn Hospital) and to shift cases to the outpatient setting as appropriate. These cases will be shifted to MVSC. Physicians will continue to be on call at the hospitals they are currently serving and to see patients there. The center projects 2% charity care and 23% Medicaid recipients. The project narrative demonstrates outreach efforts to be put in place to serve the traditionally medically underserved by contracting with Medicaid Managed Care plans.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$15,115,379, further broken down as follows:

Renovation and Demolition	\$9,449,128
Design Contingency	944,913
Construction Contingency	944,913
Architect/Engineering Fees	803,176
Construction Manager Fees	236,229
Other Fees (Consultant)	20,000
Moveable Equipment	2,632,351
CON Fee	2,000
Additional Processing Fee	<u>82,669</u>
Total Project Cost	\$15,115,379

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u> <u>2026</u>		<u>Year Three</u> <u>2028</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$4,559	\$4,194,075	\$4,837	\$5,499,575
Medicare FFS	\$2,037	\$906,457	\$2,119	\$1,165,645
Medicare Managed Care	\$2,067	\$1,078,884	\$2,151	\$1,387,374
Medicaid FFS	\$1,401	\$15,414	\$1,525	\$19,821
Medicaid Managed Care	\$1,157	\$680,386	\$1,205	\$874,932
Other	\$2,450	<u>\$144,556</u>	\$2,597	<u>\$189,552</u>
Total Revenues		\$7,019,772		\$9,136,899
Expenses:				
Operating	\$2,207.52	\$5,730,728	\$2,045.85	\$6,565,135
Capital	<u>\$590.28</u>	<u>\$1,532,371</u>	<u>\$477.52</u>	<u>\$1,532,371</u>
Total Expenses	\$2,797.80	\$7,263,099	\$2,523.37	\$8,097,506
Total Revenue		(\$243,327)		\$1,039,393
Utilization: (Procedures)		2,596		3,209

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

- Expense and utilization assumptions are based on the historical experience of MVHS in providing ambulatory surgery services.
- Reimbursement rates reflect rates based on MVHS's experience, governmental reimbursement rates (Medicare and Medicaid), and anticipated contractual agreements with commercial insurance companies.
- During 2022, MVHS performed 4,800 surgery cases that did not require overnight stays for patients residing in Oneida and Herkimer Counties. As planned for in the Health Care Transformation Program, MVHS committed to right-size the number of operating rooms in the new acute care hospital (Wynn Hospital) and to shift cases to the outpatient setting as appropriate. Therefore, approximately 1,350 cases and 2,177 cases committed by surgeons are anticipated to be shifted to MVV.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>2026</u>	<u>2028</u>
Commercial FFS	35.44%	35.43%
Medicare FFS	17.14%	17.14%
Medicare MC	20.11%	20.10%
Medicaid FFS	0.42%	0.41%
Medicaid MC	22.65%	22.62%
Charity Care	1.96%	2.03%
Other	<u>2.27%</u>	<u>2.27%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	14,500 square feet located at 601 State Street, Utica, New York.
Sublessor	Mohawk Valley Health System
Sublessee	Mohawk Valley Ventures, LLC
Term	30 years
Rental	\$398,750 (\$27.50 per sq.ft.)
Provisions	The sublessee shall be responsible for maintenance, real estate taxes, and utilities.

The lease agreement between Central Utica Building, LLC (Lessor) and Mohawk Health System (Lessee) is an arm's length lease agreement. The sublease agreement will be a non-arms-length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

The total project cost of \$15,115,379 will be funded by the operations of Mohawk Valley Health Systems.

Working capital requirements are estimated at \$1,349,584, equivalent to two months of third-year expenses, and be funded with equity from MVHS operations. Presented as BFA Attachment A are the 2021-2022 Certified Financial Statements of Mohawk Valley Health System, indicating the availability of sufficient funds for the required equity contribution. Presented as BFA Attachment B is the Pro Forma Balance Sheet of Mohawk Valley Health System as of the first day of operations, which indicates a positive net asset position of \$16,464,963.

The submitted budget indicates a net loss of (\$243,327) in the first year and a net income of \$1,039,393 by the third year. First-year losses will be offset with working capital, and MVHS has submitted a letter indicating that they will offset the loss with MVHS operations. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

The entity had an average positive working capital position and an average positive net asset position during 2021 and 2022. Also, the entity incurred average losses of \$5,474,264 from 2021 through 2022. The primary reason for the losses in 2022 was the additional labor cost associated with agency nurses. MVHS has invested additional funds in recruitment and retention and expects a reduction in agency labor expenses in 2023. Additionally, MVHS will realize financial efficiencies by consolidating all its inpatient services from its existing campuses into the new Wynn Hospital campus in October 2023.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2021 and 2022 Certified Financial Statements of Mohawk Valley Health System
BFA Attachment B	Pro Forma Balance Sheet



Project # 221277-E
Medcare LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Kings
Acknowledged: September 8, 2022

Executive Summary

Description

Medcare, LLC (Center), an existing limited liability company, requests approval to transfer 100% of its member's interest in the Article 28 diagnostic and treatment center (D&TC) located in leased space at 468 Lafayette Avenue, Brooklyn (Kings County), to Lafayette Avenue Care, LLC (Lafayette). The Center provides Medical Services - Primary Care and Other Medical Specialties. There are no planned changes to the currently provided services.

On February 9, 2022, the current sole member of Medcare, LLC, Sofiya Keisserman, entered into a membership interest purchase agreement (MIPA) to sell 100% interest in Medcare, LLC to Lafayette Avenue Care, LLC, for \$1,750,000.

Ownership before and after the requested change is as follows:

Table with 2 columns: Ownership, %
Current Operator: Medcare, LLC
Sofiya Keisserman 100%

Table with 2 columns: Ownership, %
Proposed Operator: Medcare, LLC
Lafayette Avenue Care, LLC 100%
Joseph Ehrman 50%
Mordechai Getz 50%

Lazer Leifer, M.D., will serve as the facility's Medical Director. The applicant will continue the transfer agreement for backup and emergency services with The Brooklyn Hospital Center, located 1.2 miles (3 minutes travel time) from the Center.

OPCHSM Recommendation
Approval is recommended

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

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

Financial Summary
Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price or changes in services or location.

Health Equity Impact Assessment
There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 24, 2022.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email hospinfo@health.ny.gov. [HSP]

Council Action Date

November 16, 2023

Program Analysis

Project Proposal

Medcare, LLC, an existing Article 28 Diagnostic and Treatment Center located at 468 Lafayette Avenue in Brooklyn (Kings County) seeks approval to transfer 100% membership interest from the current member LLC to two (2) new members. The facility is proposing a new Medical Director. There will be no change in services as a result of this application. Staffing will increase by 3.28 FTEs in Year One and 2.00 FTEs in Year Three.

Character and Competence

The proposed membership Medcare, LLC is provided in the chart below.

Member Name/Title	Current Ownership	Proposed Ownership
Lafayette Avenue Care*** Mordechai Getz (50.00%) Joseph Ehrman (50.00%)	0.00%	100.00%
Sofiya Keisserman	100.00%	0.00%
Total	100%	100%

Members Subject to Character and Competence

Dr. Lazer Leifer will be the Medical Director of Medcare, LLC. He is currently a Staff Physician and Primary Care/Internal Medicine Physician serving at Boro Park Center for Rehabilitation and Ezra Medical Center since 2020. Dr. Leifer received his accreditations from Long Island University's Arnold and Marie Schwartz College of Pharmacy in 2013 and Yeshiva University's Albert Einstein College of Medicine. He completed his residency at Staten Island University Hospital in 2019.

Joseph Ehrman is the CEO of Nurastar, LLC., a nutraceutical company well as Optimum Property Management, LLC., a rental property management company which he has been running for sixteen (16) and thirteen (13) years, respectively. Moreover, he has been an investor in an urgent care management firm JYM UC, LLC. Ehrman has assisted in collaboration with community leaders by providing New York State COVID-19 testing, bringing it to community facilities and houses of worship.

Mordechai Getz has been the CEO of LevelUp MD Urgent Care since 2021. He is also the CEO of Eichler's Borough Park location, which specializes in Judaica products since 2017. He currently serves on the Indiana University School of Medicine's Dean Council. Mr. Getz declares ownership interest in several healthcare facilities. The facilities are listed below.

Facility Name	State	Facility Type	Ownership %	Period of Ownership	Star Rating
Baron House of Hueytown	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Arab	AL	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Bessemer	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Big Springs	AL	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Boaz	AL	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Foley	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare Of Greensboro	AL	Skilled Nursing Facility	0.875%	2022-Present	5
Diversicare of Lanett	AL	Skilled Nursing Facility	0.866%	2022-Present	4
Diversicare of Montgomery	AL	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Oneonta	AL	Skilled Nursing Facility	0.866%	2022-Present	4
Diversicare of Oxford	AL	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Park Place	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Pell City	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Riverchase	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Winfield	AL	Skilled Nursing Facility	0.866%	2022-Present	5

Facility Name	State	Facility Type	Ownership %	Period of Ownership	Star Rating
Hartford Health Care	AL	Skilled Nursing Facility	0.857%	2022-Present	5
Windsor House	AL	Skilled Nursing Facility	0.857%	2022-Present	1
The Pearl of Hillside	IL	Skilled Nursing Facility	1.925%	2022-Present	1
Diversicare of Providence	IN	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Chanute	KS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Council Grove	KS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Haysville	KS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Hutchinson	KS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Larned	KS	Skilled Nursing Facility	0.866%	2022-Present	4
Diversicare of Sedgwick	KS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Amory	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Batesville	MS	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Brookhaven	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Eupora	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Meridian	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Moss Point	MS	Skilled Nursing Facility	0.536%	2022-Present	1
Diversicare of Quitman	MS	Skilled Nursing Facility	0.536%	2022-Present	2
Diversicare of Ripley	MS	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Shelby	MS	Skilled Nursing Facility	0.536%	2022-Present	4
Diversicare of Southaven	MS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Tupelo	MS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Tylertown	MS	Skilled Nursing Facility	0.866%	2022-Present	5
Monument Rehabilitation and Care Center	NE	Skilled Nursing Facility	4.669%	2022-Present	1
Mystic Meadows Rehab & Nursing Center	NJ	Skilled Nursing Facility	1.315%	2022-Present	1
Tenbroeck Center for Rehabilitation and Nursing	NY	Skilled Nursing Facility	7.500%	2022-Present	3
Diversicare of Bradford Place	OH	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Siena Woods	OH	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of St. Theresa	OH	Skilled Nursing Facility	0.866%	2022-Present	4
Valley Manor Rehabilitation and Care Center	PA	Skilled Nursing Facility	1.940%	2022-Present	1
Diversicare of Oak Ridge	TN	Skilled Nursing Facility	0.857%	2022-Present	1
Majestic Gardens at Memphis Rehabilitation and Skilled Nursing Center	TN	Skilled Nursing Facility	1.730%	2022-Present	2
Afton Oaks Nursing & Rehab Center	TX	Skilled Nursing Facility	0.857%	2022-Present	1
Ballinger Healthcare & Rehab Center	TX	Skilled Nursing Facility	0.857%	2022-Present	5
Brentwood Terrace Healthcare & Rehab Center	TX	Skilled Nursing Facility	0.857%	2022-Present	1

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.

Out-of-State Facilities:

Alabama:

Baron House of Hueytown received three (3) complaint violations on February 11, 2023, and received a CMP for infection control of \$14,900.00.

Diversicare of Bessemer received an enforcement action that resulted in a CMP on December 2, 2022, for \$9,081.00.

Diversicare of Foley received three (3) complaint violations as of June 2023. The facility received a CMP for \$20,651.00 in June 2021.

Diversicare of Marion received two (2) enforcement actions that resulted in CMPs. These were both received on October 20, 2022, in the amount of \$9,302.00.

Diversicare of Park Place d/b/a Park Place received five (5) health citations as of April 2022. The facility received a CMP of \$110,975.00 in 2021.

Diversicare of Riverchase received an enforcement action that resulted in a CMP. This was received on April 18, 2022, and resulted in a CMP in the amount of \$1,316.00.

Illinois:

The Pearl of Hillside received 28 complaint violations as of 2/2023. The Pearl of Hillside received an Immediate Jeopardy on March 2, 2022, for failing to initiate CPR and call a Code Blue when a resident, who was a full code, was found unresponsive. CPR was not begun until paramedics arrived approximately nine (9) minutes after the resident was found unresponsive. The resident was pronounced deceased. Federal fines in the last three years include CMP \$15,000.00 in October 2022, CMP \$12,080.00 in April 2022, CMP \$1,973.00 and CMP \$10,520.00 March 2022, CMP \$1,645.00 in February 2022, CMP \$1,300.00 in December 2021, CMP \$36,660.00 in November 2021, CMP \$983.00 in April 2021, CMP \$108,780.00 in October 2020, and CMP \$650.00 in August 2020.

Indiana:

Diversicare of Providence d/b/a Charlestown Place at New Albany received seventy-one (71) complaint inspections and nine (9) health citations as of January 2023. The facility received CMPs for \$29,325.00 in July 2022, \$28,915.00 in March 2022, \$9,750.00 in October 2021, \$9,750.00 in August 2021, \$12,103.00 in April 2021, \$9,350.00 in March 2021, and \$3,250.00 in September 2020.

Kansas:

Diversicare of Chanute received an enforcement action that resulted in a CMP of \$6,500.00 in May 2022.

Diversicare of Council Grove received an enforcement action that resulted in a CMP. This was received on December 5, 2022. The facility has not received any documentation regarding the CMP for infection control.

Diversicare of Haysville received four (4) complaint violations as of June 2023. The facility previously received CMPs for May 2019 - November 2019 for \$92,137.50 and CMP for \$7,380.46 in May 2019.

Diversicare of Lanard received an enforcement action that resulted in a CMP in November 2019 for \$13,905.45 and one in April 2022 for \$657.80.

Diversicare of Sedgwick received eight (8) health violations that resulted in CMPs in March 2022 for \$71,740.50, December 2020 for \$91,240.50, and October 2019 for \$12,941.50.

Mississippi:

Diversicare of Amory received a complaint for neglect in November 2022. The facility received a CMP in May 2017 for \$17,446.00.

Diversicare of Batesville received an IJ in February 2022. The facility received a CMP for \$44,954.00 in March 2022.

Diversicare of Meridian received a CMP for \$94,055.68 in September 2019.

Diversicare of Quitman received CMPs in September 2020 for \$3,250.00 and in March 2019 for \$13,867.75.

Diversicare of Ripley received CMPs in April 2022 for \$13,000.00 and in December 2020 for \$3,250.00.

Diversicare of Southaven, as of July 2022, has received eight (8) health violations. The facility received CMPs in February 2021 for \$65,77.74 and in September 2020 for \$81,887.00.

Diversicare of Tupelo was cited by Medicare for abuse. The facility has received five (5) complaint violations as of October 2022. The facility had received CMPs as of August 2021 for \$56,943.25 and in January 2020 for \$13,905.45.

Nebraska:

Monument Rehabilitation and Care Center has received seven (7) infection control inspections as of March 2023. The facility received CMPs in December 2021 for \$29,543.00 and \$650.00, and in August 2020 for \$16,250.00.

New Jersey:

Mystic Meadows Rehab & Nursing Center has received two (2) health violations as of November 2022. The facility received CMPs in March 2022 for \$1,316.00, in September 2021 for \$983.00 and \$655.00, and in February 2021 for \$9,750.00.

Ohio:

Diversicare of Bradford Place has received twenty-nine (29) complaint inspections as of June 2023. The facility received CMPs in December 2022 for \$15,000.00, in January 2022 for \$983.00 and \$655.00, and in December 2020 for \$26,000.00.

Pennsylvania:

Valley Manor Rehabilitation and Care Center has received twenty-three (23) health citations as of March 2023.

Tennessee:

Diversicare of Oak Ridge d/b/a Briarcliff Healthcare Center received seven (7) complaint violations and fourteen (14) health citations as of May 2023. The facility received CMPs for \$15,593.00 in September 2022, \$987.00 in March 2022, \$650.00 in January 2022, and \$14,625.00 in August 2021.

Texas:

Afton Oaks Nursing & Rehab Center has received twenty-five (25) complaint citations as of March 2023. The facility received CMPs for \$13,666.00 in February 2022, in June 2021 for \$650.00, and for \$3,250.00 in August 2021.

Brentwood Terrace Healthcare & Rehab Center has received seventeen (17) control citations as of April 2023. The facility has received CMPs for \$3,345.00 in January 2023 and \$104,293.00 in July 2021.

Chisolm Trail Nursing and Rehab received two enforcement actions that resulted in CMPs. The first was received on April 15, 2022, in the amount of \$9750.00. The second was received on July 7, 2022, in the amount of \$9750.00.

Diversicare of Oak Ridge received an enforcement action that resulted in a CMP. This was received on September 14, 2022, and resulted in a CMP in the amount of \$15,534.00.

Estates Health Care & Rehab Center has received nine (9) infection control citations as of April 2023. The facility has received CMPs of \$1,073.00 in October 2022, \$9750.00 in August 2022, \$21,522.00 in November 2021, \$10,848.00 in December 2020, and \$5,148.00 in September 2020.

Normandy Terrace Healthcare & Rehab Center has received fifteen (15) infection control citations as of June 2023. The facility has received CMPs for \$9,750.00 in January 2023, August 2022 for \$9,750.00, \$15,000.00 in February 2022, November 2021 for \$13,507.00, September 2021 for \$650.00, and \$5,000.00 in August 2021.

Oakmont Healthcare & Rehab Center of Humble has received five (5) health citations as of August 2022. The facility has received CMPs for \$2,580.00 in March 2023, \$61,211.00 in July 2022, \$650.00 in November 2021, and \$55,290.00 in September 2021.

Treemont Healthcare & Rehab Center has received fourteen (14) health inspection citations as of June 2023. The facility has received CMPs for \$62,531.00 in February 2023, \$133,065.00 in March 2022, \$26,620 in December 2021, \$9,750.00 in August 2021, \$9,750.00 in May 2021, and \$5,000.00 in October 2020.

Conclusion

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

Financial Analysis

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	February 23, 2022
Premises:	2,500 square feet located at 468 Lafayette Avenue, Brooklyn, New York 11205
Landlord:	BMS Realty Management, LLC.
Tenant:	Medcare, LLC.
Term:	Ten Years and three (3) renewals of ten years each
Rental:	Rent is \$96,000 with a 3% yearly increase. Rent for 1 st -year renewal is \$129,016 with a 3% increase.
Provisions:	Real estate taxes, maintenance, insurance, and utilities.

The applicant has provided an affidavit attesting that the lease is an arms-length agreement, as there is no relationship between landlord and tenant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

Membership Interest Purchase Agreement

The applicant has submitted an executed membership purchase agreement to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	February 9, 2022
Seller:	Medcare, LLC and Sofiya Keisserman
Buyer:	Lafayette Avenue Care, LLC
Membership Interest Acquired:	100% issued and outstanding membership interest
Asset Acquired:	All the assets and property owned by the company are necessary to conduct the business free and clear of any liens.
Excluded Assets:	Accounts Receivable before closing
Excluded Liabilities:	Accounts Payables accrued before closing.
Purchase Price:	\$1,750,000
Payment of the Purchase Price:	\$175,000 deposit at signing \$1,575,000 due at Closing

The \$1,750,000 purchase price for the Center is to be funded via members' equity. BFA Attachment A presents the net worth summary for Lafayette Avenue Care, LLC members, which reveals sufficient resources to cover equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 25, 2022, the facility had no outstanding Medicaid liabilities.

Capability and Feasibility

There are no project costs associated with this application; however, the acquisition costs for membership in Medcare, LLC of \$1,750,000 will be met through members' equity from Lafayette Avenue Care, LLC.

The working capital requirement is estimated at \$241,164 based on two months of first-year expenses. The applicant will fund working capital from members' equity. Review of BFA Attachments A reveals sufficient resources to meet all the equity requirements.

BFA Attachment B presents Medicare, LLC., pro forma balance sheet, which shows the entity will start with \$1,641,164 in members' equity. Equity includes \$1,480,000 in goodwill, which is not a liquid resource nor recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets would become a positive \$161,164.

BFA Attachments C presents Medicare, LLC. 2020 and 2021 certified financial statements show positive working capital and net assets. For 2020 and 2021, the Center had an average profit of \$73,988.

Conclusion

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

<h2>Attachments</h2>

BFA Attachment A	Net Worth Statement of Proposed Members
BFA Attachment B	Pro-Forma Statement
BFA Attachment C	Medicare, LLC., 2020 - 2021 Certified Financial Statements

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: October 4, 2023

Subject: Consent to Formation of The Foundation of Catholic Health

The attached package was prepared by Vincent DiCocco for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memorandum and kindly return the package to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

To: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

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

Date: October 4, 2023

Subject: Consent to Formation of The Foundation of Catholic Health

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) A March 29, 2023, letter to the PHHPC requesting Consent to Formation of The Foundation of Catholic Health;
- 3) The Certificate of Incorporation of The Foundation of Catholic Health;
- 4) The Bylaws of The Foundation of Catholic Health; and
- 5) Original letters signed by duly authorized representatives of each of the intended supported organizations.

Attachments.

cc: J. Corvino

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: October 4, 2023

Subject: Consent to Formation of The Foundation of Catholic Health

The Foundation of Catholic Health ('The Corporation') requests Public Health and Health Planning Council ('PHHPC') approval of its formation in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') § 404(b), (o) and (t).

The Corporation is seeking to form a New York not-for-profit with a corporate purpose to "... *benefit and assist, through the solicitation of contributions, the healthcare and/ or hospital purposes and such other purposes as may be set forth in the respective certificates of incorporation of [listed affiliates] ...*" and to be "... *operated, exclusively for Catholic charitable, religious, scientific, or educational purposes.*"

Attached is a request letter from Sharon Prise Azurin on behalf of The Corporation, a proposed Certificate of Incorporation, the corporate Bylaws and original letters signed by authorized representatives of each of the intended supported organizations.

There is no legal objection to the proposed formation of this charitable organization.

Attachments



Phillips Lytle LLP

Via E-Mail and Federal Express

March 29, 2023

Mark A. Schweitzer
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Re: Consent to Formation of The Foundation of Catholic Health (the "Corporation")
by New York State Department of Health/Public Health and Health Planning
Council ("PHHPC")

Dear Mr. Schweitzer:

As a follow up to our prior emails in connection with the above referenced matter,
attached please find the following documentation:

1. Certificate of Incorporation of the Corporation ("COI") (*Exhibit A*);
2. Bylaws for the Corporation (*Exhibit B*);
3. Original letters signed by a duly authorized representative of each of the
following intended supported organizations:
 - a. Catholic Health System, Inc. (*Exhibit C*);
 - b. Kenmore Mercy Hospital (*Exhibit D*);
 - c. Mercy Hospital of Buffalo (*Exhibit E*);
 - d. Sisters of Charity Hospital of Buffalo, New York (*Exhibit F*);
 - e. Mount St. Mary's Hospital of Niagara Falls (*Exhibit G*);
 - f. WNY Catholic Long Term Care, Inc. (*Exhibit H*);
 - g. McAuley-Seton Home Care Corporation (*Exhibit I*);
 - h. Niagara Homemaker Services, Inc. (*Exhibit J*); and

ATTORNEYS AT LAW

SHARON PRISE AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTLLE.COM

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- i. Catholic Health System Program of All-Inclusive Care for the Elderly, Inc. (*Exhibit K*).

In response to certain additional questions regarding the proposed Corporation, we provide the following responses:

1. Regarding the fundraising activities to be taken by the Corporation, please see Paragraph THIRD of the COI, which states that the Corporation will solicit contributions for the noted entities:

“the specific purpose of the corporation shall be to benefit and assist, through the solicitation of contributions...”

2. Following is information regarding the Corporation’s initial Board of Directors:

Name & Address	Employer Name & Address	Past & Present Affiliations with Other Charitable or Non-Profit Organizations
Raymond P. Crane c/o Brock, Schechter & Polakoff, LLP 726 Exchange Street Suite 822 Buffalo, NY 14210	Brock, Schechter & Polakoff, LLP 726 Exchange Street Suite 822 Buffalo, NY 14210 Occupation: Accountant (Partner)	<ul style="list-style-type: none">• St. Joseph Hospital Foundation - Former Director• Kenmore Mercy Foundation - Director, Vice President• St. Christopher Church Finance Committee - Former Member, Head of the Committee
Anthony L. Eugeni 1285 87th Street Niagara Falls, NY 14304	Woods Oviatt Gilman, LLP 200 Delaware Ave #1200 Buffalo, NY 14202 Occupation: Attorney (Partner)	<ul style="list-style-type: none">• Niagara Falls Boys & Girls Club - Director, Former Chairman• Mount St. Mary’s Hospital - Former Director• Niagara Falls Country Club - Former Director, President



Name & Address	Employer Name & Address	Past & Present Affiliations with Other Charitable or Non-Profit Organizations
Anthony L. Eugeni (continued)		<ul style="list-style-type: none">• Our Lady of Peace Nursing Home - Director• Mount St. Mary's Hospital Foundation - Director• United Way of Greater Niagara - Former Director
Vincent O. Hanley c/o Bond, Schoeneck & King, PLLC The Avant Building Suite 900 200 Delaware Avenue Buffalo, NY 14202- 2107	Bond, Schoeneck & King, PLLC The Avant Building Suite 900 200 Delaware Avenue Buffalo, NY 14202-2107 Occupation: Attorney (Member)	<ul style="list-style-type: none">• Mercy Hospital Foundation - Director• Catholic Health Continuing & Home Care Foundation - Director• Society of St. Vincent de Paul of Western New York - Director• Food Bank of Western New York 2014-2019 - Former Director• Hilbert College - Former Trustee, Chair• D'Youville College - Former Trustee
Sharon Prise Azurin 42 Hillsboro Dr. Orchard Park, NY 14127	Phillips Lytle LLP One Canalside 125 Main Street Buffalo, NY 14203 Occupation: Attorney (Partner)	<ul style="list-style-type: none">• Mercy Hospital Foundation - Director, Vice Chair• Trocaire College - Former Director, Vice Chair• The Buffalo Seminary Alumnae Association - Former Director, Treasurer



Name & Address	Employer Name & Address	Past & Present Affiliations with Other Charitable or Non-Profit Organizations
Joyce V. Williams 3 Sun Street Buffalo, New York 14215	Univera Healthcare 205 Park Club Lane Buffalo, NY 14221 Occupation: Advocacy Associate	• Sisters Hospital Foundation - Director

3. Identification of the organizational relationship between the Corporation and the licensed supported organizations: Catholic Health System, Inc. will be the sole corporate member of the Corporation. Catholic Health is also the sole corporate member of each of the other supported organizations.

4. A list of any entities, which control, or are controlled by, the Corporation and the nature of such relationships: Catholic Health System, Inc. will be the sole corporate member of the Corporation.

5. The Corporation has not been previously approved by PHHPC. This is an initial consent for a new not-for-profit corporation to be formed. The Corporation requires consent of PHHPC to form (see paragraph FOURTH of the COI).

We respectfully request a letter of consent from PHHPC to permit filing of the proposed Certificate of Incorporation of "The Foundation of Catholic Health" with the New York State Department of State.



Mark A. Schweitzer
Page 5

March 29, 2023

Thank you for your assistance and please do not hesitate to contact me should you have any additional questions.

Very truly yours,

Phillips Lytle LLP

By *Sharon Prise Azurin*

Sharon Prise Azurin

SPA

Enclosure(s)

Doc #10829871.2

cc: Colleen M. Leonard
Executive Secretary,
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

**CERTIFICATE OF INCORPORATION
OF
THE FOUNDATION OF CATHOLIC HEALTH**

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

FIRST: The name of the corporation is THE FOUNDATION OF CATHOLIC HEALTH.

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

THIRD: The corporation is organized, and at all times shall be operated, exclusively for Catholic charitable, religious, scientific, or educational purposes. Consistent with the foregoing, the specific purpose of the corporation shall be to benefit and assist, through the solicitation of contributions, the healthcare and/or hospital purposes and such other purposes as may be set forth in the respective certificates of incorporation of Catholic Health System, Inc. ("CHS"); Kenmore Mercy Hospital; Mercy Hospital of Buffalo; Sisters of Charity Hospital of Buffalo, New York; Mount St. Mary's Hospital of Niagara Falls; WNY Catholic Long Term Care, Inc.; McAuley-Seton Home Care Corporation; Niagara Homemaker Services, Inc.; and Catholic Health System Program of All-Inclusive Care for the Elderly, Inc., so long as they are charitable not-for-profit corporations and organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and such other affiliated charitable not-for-profit corporations formed to fulfill the mission and purposes of any of the foregoing not-for-profit corporations (collectively, the "Affiliates").

FOURTH: The corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.

FIFTH: The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

SIXTH: The office of the corporation is to be located in the County of Erie, State of New York.

SEVENTH: The names and addresses of the initial directors of the corporation are:

Raymond P. Crane
c/o Partner, Brock, Schechter & Polakoff, LLP
726 Exchange Street/Suite 822
Buffalo, NY 14210

Anthony Eugeni
c/o Woods Oviatt Gilman, LLP
200 Delaware Ave #1200
Buffalo, NY 14202

Vincent Hanley
c/o Bond, Schoeneck & King, PLLC
The Avant Building - Suite 900
Buffalo, NY 14202-2107

Sharon Prise Azurin
c/o Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203

Joyce Williams
c/o Univera Healthcare
205 Park Club Lane
Buffalo, NY 14221

EIGHTH: The Secretary of State of New York is designated as the agent of the corporation, upon whom process against the corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any such process served upon him/her is:

c/o Catholic Health System, Inc.
144 Genesee Street
Buffalo, New York 14203
Attention: President

NINTH: The following language relates to the corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the corporation's purposes or powers set forth in paragraph THIRD.

a. No part of the net earnings of the corporation shall inure to the benefit of any trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no trustee, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation; except the corporation may make payments, distributions or donations for charitable, religious, educational and scientific purposes to organizations that are exempt from Federal income tax under Section 501(a) of the Code, described in Section 501(c)(3) of the Code and described in Section 509(a)(1) or 509(a)(2) of the Code.

b. No substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall it in any manner participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of any candidate for public office.

c. Notwithstanding any other provision of this Certificate, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Code and by an organization, contributions to which are deductible under the Code.

d. Notwithstanding any other provision of this Certificate of Incorporation, if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code, then during such time or times:

1. The corporation shall distribute all of its income for each taxable year and, if necessary, so much of its principal at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Code;

2. The corporation shall not engage in any act of self-dealing, as defined in Section 4941(d) of the Code;

3. The corporation shall not retain any excess business holdings, as defined in Section 4943(c) of the Code;

4. The corporation shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; and

5. The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

e. Any references herein to any provision of the Code shall be deemed to mean such provision as now or hereafter existing, amended, or superseded, as the case may be.

TENTH: The management of the affairs of the corporation shall be vested in the board of directors except as otherwise provided in this Certificate of Incorporation or in the by-laws of the corporation.

ELEVENTH: Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (2) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association; (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

TWELFTH: In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to CHS and/or one or more of the Affiliates, provided that such distributee(s) shall then qualify under Section 501(c)(3) and Section 509(a)(1), (2) or (3) of the Code pursuant to a plan of distribution approved by CHS, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations. If none of the distributees shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for Catholic religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) and Section 509(a)(1), (2) or (3) of the Code pursuant to a plan of distribution approved by CHS, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations.

IN WITNESS WHEREOF, the undersigned has made and signed this certificate as of the 16th day of June, 2022.

Lisa Bryning

Lisa Bryning, Incorporator
28 E Main Street, Suite 1400
Rochester, New York 14614

Doc #10330919.7

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION OF CATHOLIC HEALTH

Under Section 402 of the Not-for-Profit Corporation
Law of the State of New York

Phillips Lytle LLP
28 E Main Street, Suite 1400
Rochester, New York 14614

BY-LAWS
OF
THE FOUNDATION OF CATHOLIC HEALTH

ARTICLE I

Purposes

The name of the corporation is The Foundation of Catholic Health (hereinafter called the “Corporation”). The Corporation is a charitable corporation within the meaning of the New York Not-for-Profit Corporation Law (as amended from time to time, the “NPCL”). The Corporation is formed and is operated exclusively for those purposes set forth in its certification of incorporation, as may be amended from time to time.

ARTICLE II

Membership

Section 1. Member. Catholic Health System, Inc. (the “System”) shall be the sole member (the “Member”) of the Corporation.

Section 2. Withdrawal. The System may withdraw from membership in the Corporation at any time by notice in writing to the chair of the board of directors of the Corporation or the secretary. The consent of the Corporation to a withdrawal shall not be necessary.

Section 3. Dues. No dues shall be required of the System as the Member of the Corporation.

Section 4. Compensation. The System shall not receive compensation for serving in its capacity as Member to the Corporation, but it may be reimbursed for any reasonable expenses incurred on behalf of the Corporation.

ARTICLE III

Meetings of the Member

Section 1. Annual Meeting. The annual meeting of the Member of the Corporation, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at the principal office of the Corporation or at such other place as the Member may determine, in May or at such other place and date as the System as the Member may determine.

Section 2. Special Meetings. Special meetings of the Member, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time by the board of directors, or the chair of the board, and shall be called by the chair of the board or the secretary at the request in writing of one-third or more of the directors then in office or at the request in writing of the Member. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the objects stated in the call and matters germane thereto.

Section 3. Notice of Meetings of the Member. Written notice of the place, date and hour of each meeting of the Member shall be given, personally, by mail, by facsimile telecommunications or by electronic mail, to the System as Member, and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. If the notice is given personally, by first class mail or by facsimile telecommunications or by electronic mail, it shall be given not less than ten (10) nor more than fifty (50) days before

the date of the meeting. If the notice is mailed by any other class of mail, it shall be given not less than thirty (30) nor more than sixty (60) days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the System as Member at its address as it appears on the Corporation's records, a written request that notices the System as Member, her or it be mailed to some other address, then directed to the System as Member at such other address. If sent by facsimile telecommunication or electronic mail, notice is given when directed to the Member's facsimile number or electronic mail address as it appears on the record of members or to such other facsimile number or electronic mail address as the Member may specify to the secretary of the Corporation. An affidavit of the secretary or other person giving the notice or of a transfer agent of the Corporation that the notice required by this Section has been given shall be prima facie evidence of the facts therein stated.

Section 4. Waiver of Notice. Notice of any meeting of the Member need not be given to the Member if it submits a waiver of notice, in person or by proxy, whether before or after the meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the Member or the Member's authorized officer, director, employee or agent signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The attendance of any duly authorized representative of the Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by the Member. The meeting shall be duly called and held if notice is given to, or is waived by the Member.

Section 5. Procedure. The order of business and all other matters of procedure at every meeting of the Member may be determined by the presiding officer.

Section 6. Quorum. At every meeting of the Member, except as otherwise provided by law or these by-laws, a quorum must be present for the transaction of any business and a quorum shall consist of the System as Member present either in person or by proxy.

Section 7. Adjournments. If the System as Member is present in person or by proxy at any meeting of the Member, whether or not it constitutes a quorum, it shall have power by a majority vote to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which a quorum is present any business may be transacted which might have been transacted on the original date of the meeting.

Section 8. Voting - Proxies. Except as otherwise provided in the certificate of incorporation or by law, the System as the Member shall be entitled at every meeting of the Member to one vote. Except as otherwise provided by law or these by-laws, all questions that shall come before a meeting shall be decided by a majority of votes cast. The System as the Member may vote either in person or by proxy signed by it or by the attorney-in-fact and delivered to the secretary of the meeting. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member or its personal representatives, unless it is entitled "irrevocable proxy" in which event its revocability shall be determined by the law of the State of New York in effect at the time.

Section 9. Action Without A Meeting. Whenever the Member is required or permitted to take any action by vote, such action may be taken without a meeting upon the consent, setting forth the action so taken, of the System as Member. Such consent may be written or

electronic. If written, the consent must be executed by the Member or the Member's authorized officer, director, employee or agent by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Member.

ARTICLE IV

Reserved Powers

In addition to all other rights and powers of membership prescribed by New York law, and the certificate of incorporation, the Corporation hereby reserves to the System as Member the following powers:

(a) To approve and interpret the statement of philosophy and mission of the Corporation including the stated purposes of the Corporation as set forth in the certificate of incorporation, and to require that the Corporation operates in accordance with an agreed upon strategic plan and in conformance with the Corporation's philosophy, mission and stated purposes;

(b) To approve and amend the certificate of incorporation and the by-laws of the Corporation;

(c) To approve any plan of merger, consolidation or reorganization of the Corporation;

(d) To approve any plan of dissolution of the Corporation and the distribution of the assets of the Corporation upon dissolution;

(e) To appoint and remove, with or without cause, the directors of the Corporation;

(f) To appoint and remove, with or without cause, the chair of the board of directors of the Corporation; and

(g) To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation which constitutes all or substantially all of the assets of the Corporation.

ARTICLE V

Directors

Section 1. Number and Qualifications. The board of directors (the "Board") shall initially be composed of five (5) directors. The total number of directors may be increased to such number not greater than twenty-four (24) or decreased to such number not less than three (3), as may be fixed from time to time by the Member. The president and chief executive officer of the System (or the individual with corresponding responsibilities regardless of title) shall serve as an ex-officio voting member of the Board. The Executive Director of the Corporation (or the individual with corresponding responsibilities regardless of title) shall serve as an ex-officio non-voting member of the Board. No decrease in the number of directors shall shorten the term of any incumbent director. Any vacancy created by an increase in the number of directors shall be filled as provided in Section 5 hereof. Directors must be at least eighteen years of age.

Section 2. Appointment and Tenure. The directors (other than the ex-officio directors) shall be appointed by the System as the Member upon recommendation of the Board, at the annual meeting of the Member or at any meeting of the Member held in lieu thereof. However, the System as Member shall not be bound to elect persons recommended by the Board. Directors shall serve no more than two consecutive three-year terms, with the exception of the chair of the Board, the vice-chair, and the immediate past chair who may continue to serve until the conclusion of their respective terms of office with respect to the chair and the vice-chair and until one year

after the conclusion of his/her term of office with respect to the immediate past chair. An ex-officio director shall serve on the Board as long as he or she holds the position from which the directorship derives.

Section 3. Resignation. Any director of the Corporation may resign at any time by giving his or her resignation to any officer of the Corporation. An ex-officio director may resign his or her directorship only by resigning or otherwise withdrawing from the office from which the directorship is derived. Unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Removal. Any or all of the directors (other than the ex-officio directors) may be removed with or without cause by a vote of the System as Member, provided that the proposed action was referred to in the notice for such meeting.

Section 5. Newly Created Directorships and Vacancies. Newly created directorships resulting from an increase in the number of directors, and vacancies occurring in the Board for any reason (other than the ex-officio directors) may be filled by vote of the System as Member. A director elected to fill a vacancy shall be elected to hold office until the next annual meeting of the System as Member at which the election of directors is in the regular order of business, and until a successor is elected or appointed and qualified. A vacancy in an ex-officio directorship shall automatically and immediately be filled by the successor in the office from which the directorship is derived.

Section 6. Compensation. No director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise, or shall be reimbursed for his or her expenses, except pursuant to authorization of the Board. This section shall not preclude any director from serving the Corporation in any other capacity or from receiving compensation

for such services and reimbursement for his or her related expenses, provided, that no such director who may benefit from such compensation may be present at or otherwise participate in any Board or committee deliberation or vote concerning such director's compensation. Notwithstanding the foregoing, nothing in this section shall prohibit the Board or an authorized committee thereof from requesting that a director who may benefit from such compensation present information as background or answer questions at a Board or committee meeting prior to the commencement of deliberations or voting relating thereto.

Section 7. Meetings of Directors. A regular annual meeting of the Board shall be held at such time in the month of December in each year as the Board may determine for the purposes of approving the annual report, recommending candidates for directors and electing officers, and transacting such other business as may properly come before the meeting. For the purpose of fostering a close and continuous working relationship between the Corporation and the System or its successor, one or more of the officers of the System, or its successor, shall be invited to attend each regular meeting of the Board. The Board shall regularly consult with officers of the System regarding investment policies of the Corporation, the timing and manner of making grants of income to, and the financial needs and requirements of, the System in order that the Corporation may be responsive to such needs and requirements and enhance the close and continuous working relationship between the Corporation and the System. Regular meetings of the Board shall be held at least quarterly at such times and at such places as may be determined by action of the Board or in the absence of such action by any two directors or the chair of the Board pursuant to such notice as is required by Section 8 of this Article.

Section 8. Notice of Meetings of Board of Directors.

(a) Notice of the time and place of each meeting of the Board shall be given by the chair of the Board or the secretary, or by the two directors calling the same to each director (1) not less than one (1) nor more than thirty (30) days before the meeting by (i) mailing the notice, postage prepaid, addressed, to each director at his or her residence or usual place of business, (ii) by facsimile or (iii) by electronic-mail or (2) not less than one (1) day before the meeting by delivering the notice to each director personally by telephone.

(b) If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the director at his or her address as it appears in the record of directors or to such other address as the director may specify to the secretary of the Corporation in writing from time to time. If sent by facsimile, notice is given when the sender transmits it to the director's facsimile number as it appears in the record of directors or to such other facsimile number as the director may specify to the secretary of the Corporation. If sent electronically, notice is given when the sender transmits it to the director's electronic address as it appears in the record of directors or to such other address as the director may specify to the secretary of the Corporation. If personally by telephone, notice is given when the sender speaks with the director directly or leaves the director a message in a voice mail box or with another person at the telephone number as it appears in the record of directors or such other telephone number as the director may specify to the secretary of the Corporation.

Section 9. Waiver of Notice of Meeting. Notice of a meeting of the Board or a committee thereof need not be given to any director who submits a waiver of notice, whether before or after the meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be

affixed to such waiver by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The attendance of any director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice. The meeting shall be duly called and held if notice is given to, or is waived by, all absent directors.

Section 10. Quorum. At all meetings of the Board, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum shall be required for the transaction of business and shall consist of not less than a majority of the entire Board, and the vote of a majority of the directors present shall decide any question that may come before the meeting. A majority of the directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

Section 11. Procedure. The order of business and all other matters of procedure at every meeting of directors may be determined by the presiding officer.

Section 12. Committees of the Board.

(a) The committees of the Board shall be:

i. Executive Committee. The Executive Committee shall consist of no less than three (3) directors and shall include the officers of the Corporation then in office (all of whom shall be members of the Board), plus such additional directors as may be recommended by the chair and approved by the Board. The Executive Committee shall have the power to transact all regular business of the Corporation between meetings of the Board, subject to the limitations set forth in any provision of applicable law, the certificate of incorporation, or these

by-laws. The Executive Committee shall coordinate the activities and general policies of the Corporation; shall make recommendations to the Board with respect to managing and conducting the affairs of the Corporation; shall review all operations, transactions, and business of the Corporation to assure the best interests of the Corporation will be served or shall recommend changes; and shall meet and act as otherwise instructed by the Board.

ii. Audit Committee. The Audit Committee shall consist of three (3) or more directors, each of whom shall be an Independent Director (as defined below). The Audit Committee shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements in accordance with Section 16 of this Article.

(b) The Board may, by resolution or resolutions adopted by a majority of the entire Board, designate from among its members such other committees, each consisting of three (3) or more directors.

(c) Each committee shall serve at the pleasure of the Board and shall have to the extent provided for in such resolutions, the certificate of incorporation or these by-laws, all of the authority of the Board; provided, however, that no committee shall have authority over the following matters: (1) the submission to the Member of any action requiring the Member's approval by law, the certificate of incorporation or these by-laws; (2) the filling of vacancies in the Board or in any committee; (3) the fixing of compensation of the directors for serving on the Board or on any committee; (4) the amendment or repeal of these by-laws or the adoption of new by-laws; (5) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable; (6) the election or removal of officers and directors; (7) the approval of a merger or plan of dissolution; (8) the adoption of a resolution recommending to the Member

action on the sale, lease, exchange or other disposition of all or substantially all the assets of the Corporation; and (9) the approval of amendments to the certificate of incorporation.

(d) The Board may designate one or more directors as alternate members of a committee, who may replace any absent member or members at any meeting of such committee.

(e) Committees other than committees of the Board shall be committees of the Corporation. Members of such committees of the Corporation, who may be non-directors, shall be elected or appointed in the same manner as officers of the Corporation, but no such committee shall have the authority to bind the Board.

(f) The committees shall keep regular minutes of their proceedings and make the same available to the Board upon request.

Section 13. Annual Report. The Board shall keep a fair record of all of the transactions of the Corporation, a report of which, prepared in accordance with the provisions of the NPCL, shall be presented at each annual meeting of the Member. The report shall be filed in the Corporation's records and a copy of the report shall be entered in the minutes of the proceedings of the annual meeting of the Member.

Section 14. Action Without A Meeting. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The

resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Board or the committee.

Section 15. Meetings by Conference Telephone or Electronic Video Screen Communication. Any one or more members of the Board or any committee thereof who is not physically present at a meeting of the Board or committee may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication, as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board or committee including, without limitation, the ability to propose, object to and vote upon a specific action to be taken by the Board or committee. Participation by such means shall constitute presence in person at a meeting.

Section 16. Audit Oversight.

(a) The Audit Committee shall oversee the audit of the Corporation's financial statements in accordance with the requirements of this section. The Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

(b) If for any fiscal year the Corporation is required to file an independent certified public accountant's audit report with the attorney general pursuant to Section 172-b(1) of the New York Executive Law (or such successor provision thereto) and the Corporation, in the prior fiscal year, had or, in the current fiscal year, reasonably expects to have annual revenue in excess of one million dollars (\$1,000,000), the Audit Committee shall, in addition to those duties set forth in paragraph (a) of this section: (1) review with the independent auditor the scope and

planning of the audit prior to the audit's commencement; (2) upon completion of the audit, review and discuss with the independent auditor: (A) any material risks and weaknesses in internal controls identified by the auditor; (B) any restrictions on the scope of the auditor's activities or access to requested information; (C) any significant disagreements between the auditor and management; and (D) the adequacy of the Corporation's accounting and financial reporting processes; (3) annually consider the performance and independence of the independent auditor; and (4) report on the committee's activities to the Board.

(c) If the Corporation controls a group of corporations, the board of directors or designated audit committee of the controlling corporation may perform the duties required by this section for one or more of the controlled corporations.

(d) Only Independent Directors may participate in any Board or committee deliberations or voting relating to matters set forth in this section, provided that nothing in this paragraph shall prohibit the Board or the Audit Committee from requesting that a person with an interest in the matter present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto.

(e) For purposes of these by-laws, "Independent Director" means a director who: (i) is not, and has not been within the last three years, an employee or a key person of the Corporation or an affiliate of the Corporation, and does not have a relative who is, or has been within the last three years, a key person of the Corporation or an affiliate of the Corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars (\$10,000) in direct compensation from the Corporation or an affiliate of the Corporation; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial

interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an affiliate of the Corporation if the amount paid by the Corporation to the entity or received by the Corporation from the entity for such property or services, in any of the last three fiscal years, exceeded the lesser of ten thousand dollars (\$10,000) or two percent (2%) of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than five hundred thousand dollars (\$500,000); twenty-five thousand dollars (\$25,000) if the entity's consolidated gross revenue was five hundred thousand dollars (\$500,000) or more but less than ten million dollars (\$10,000,000); one hundred thousand dollars (\$100,000) if the entity's consolidated gross revenue was ten million dollars (\$10,000,000) or more; or (iv) is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three years. For purposes of this subparagraph, the terms "compensation" does not include reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers) of the NPCL; and "payment" does not include charitable contributions, dues or fees paid to the Corporation for services which the Corporation performs as part of its nonprofit purposes, or payments made by the Corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Corporation are available to individual members of the public on the same terms, and such services received by the Corporation are not available from another source. For the purposes of this Section, the terms "key person," "affiliate," and "relative" shall have such meanings as ascribed to them in the NPCL.

Section 17. Policy Oversight.

(a) The Board shall adopt, and oversee the implementation of, and compliance with, the Corporation's conflict of interest policy and whistleblower policy, as required by the NPCL.

(b) Directors who are employees may not participate in any Board or committee deliberations or voting relating to administration of the whistleblower policy.

ARTICLE VI

Officers

Section 1. Officers. The officers of the Corporation shall consist of a chair, a vice-chair, a secretary and a treasurer, all of whom shall be members of the Board and such additional officers as the Board may determine from time to time. Officers shall be elected at the annual meeting of the Board; provided that the chair shall be appointed by the Member. Such additional officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly delegated or assigned to them from time to time by the board of directors.

Section 2. Term of Office. The officers of the Corporation, unless otherwise determined by the Member or directors, as applicable, shall hold office until their successors are elected and have qualified. The chair may be removed, with or without cause, by a vote of the Member. Any officer, other than the chair, may be removed at any time with or without cause by the Board. Vacancies in any office, other than the chair, shall be filled by the Board. Vacancies in the offices of the chair shall be filled by the Member.

Section 3. The Chair. The chair shall preside at all meetings of the Board at which the chair is present. The chair shall exercise such powers and perform such duties as usually

pertains to the office or are designated or assigned from time to time by the members. No employee of the Corporation shall serve as chair or hold any other title with similar responsibilities.

Section 4. The Vice-Chair. The vice-chair shall, in the absence or at the request of the chair, perform the duties and exercise the powers of the chairman. The vice-chair shall also have such powers and perform such duties as usually pertain to his or her office or as are properly required of him by the Board. No employee of the Corporation shall serve as vice-chair or hold any other title with similar responsibilities.

Section 5. The Secretary and Assistant Secretaries. The secretary shall issue notices of all meetings of the Member and directors where notices of such meetings are required by law or these by-laws. The secretary shall attend all meetings of the Board and keep the minutes thereof. The secretary shall affix the corporate seal to and sign such instruments as require the seal or his or her signature and shall perform such other duties as usually pertain to the office or as are properly required by the Board.

The assistant secretaries, if any, may, in the absence or disability of the secretary, or at his or her request, perform the duties and exercise the powers of the secretary, and shall perform such other duties as the board of directors shall prescribe.

Section 6. The Treasurer and Assistant Treasurers. The treasurer shall have the care and custody of all moneys and securities of the Corporation. The treasurer shall keep full and accurate accounts of all the moneys received by him or her and paid by him or her on account of the Corporation. The treasurer shall make and sign such reports, statements and instruments as may be required by the board of directors or by the laws of the United States or of any state in which the Corporation operates, and shall perform such other duties as usually pertain to the office or as are properly required by the board of directors.

The assistant treasurers, if any, may, in the absence or disability of the treasurer, or at his or her request, perform the duties and exercise the powers of the treasurer and shall perform such other duties as the board of directors shall prescribe.

Section 7. Officers Holding Two or More Offices. Any two or more of the above-mentioned offices, except those of chair (or president, if any) and secretary, may be held by the same person, but no officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Corporation, or for any other reason that the Board may deem sufficient, the board of directors may delegate and assign, for the time being, the powers and duties of any officer to any other officer or to any director.

Section 9. Compensation. The officers shall not receive any compensation for their services, but they may be reimbursed for any reasonable expenses incurred on behalf of the corporation.

Section 10. Executive Director or Other Personnel. All staff personnel including the Executive Director, shall be employees of the Member, or a corporation affiliated with the Member, which shall be responsible for all aspects of their employment. The Executive Director shall report both to the Board and the Member and shall comply with Catholic Health System, Inc. policies. The Executive Director shall be responsible for executing, directing and coordinating activities that increase philanthropic support for the Corporation. The Executive Director will engage the Board in productive fundraising and support its governance efforts. The Executive Director shall have the following specific responsibilities:

- (a) Design, execution and evaluation of all philanthropic activity necessary to achieve the Corporation's goals and objectives.
- (b) Design and implementation of procedures to assure compliance with all fiduciary responsibilities of the Corporation.
- (c) Management of the human resources of the Corporation including professional development and performance evaluation.
- (d) Responsible for administering Corporation policies and initiatives and ensuring that the Corporation successfully carries out the mission.
- (e) Keeps the Board fully aware of all Corporation activities through periodic and appropriate means of communication and Board meetings.
- (f) Development and management of the technology resources of the Corporation.
- (g) Collaborate with the Board on recruitment, training, support and direction of volunteer leaders.

ARTICLE VII

Indemnification

The Corporation shall indemnify each person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate is or was a member, director or officer of the Corporation, or, while a member, director or officer, serves or served, at the request of the Corporation, any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys' fees, incurred in connection with such action or proceeding, or any appeal therein, provided that no such indemnification shall be made if a judgment or other final

adjudication adverse to such person establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, and provided, further, that no such indemnification shall be required with respect to any settlement or other nonadjudicated disposition of any threatened or pending action or proceeding unless the Corporation has given its prior consent to such settlement or other disposition.

The Corporation shall advance or promptly reimburse any member, director or officer seeking indemnification hereunder for all expenses, including attorneys' fees, reasonably incurred in defending any action or proceeding in advance of the final disposition thereof upon request by or on behalf of such person and receipt of an undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled.

This Article shall be given retroactive effect and the full benefits hereof shall be available in respect of any alleged or actual occurrences, acts, or failures to act prior to the date of the adoption of this Article. The right to indemnification or advancement of expenses under this Article shall be a contract right.

ARTICLE VIII

Miscellaneous

Section 1. Form of Seal. The seal of the Corporation shall be in such form as the directors shall determine.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless otherwise provided by the Board.

Section 3. Amendment. These by-laws may be added to, amended, or repealed by the Member at any regular meeting or any special meeting, if at least seven (7) days' written notice is given of intention to add to, alter, amend or repeal at such meeting.

Doc #10347954.3



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Catholic Health System, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

CATHOLIC HEALTH SYSTEM, INC.

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950250.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

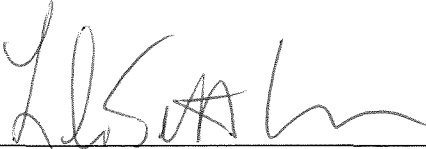
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Kenmore Mercy Hospital (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

KENMORE MERCY HOSPITAL

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950254.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

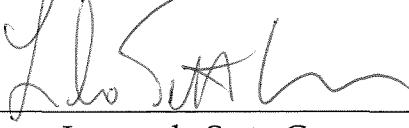
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Mercy Hospital of Buffalo (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

MERCY HOSPITAL OF BUFFALO

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950320.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Sisters of Charity Hospital of Buffalo, New York (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

SISTERS OF CHARITY HOSPITAL OF BUFFALO, NEW YORK

By: _____

Name: Leonardo Sette-Camara, Esq.

Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950338.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

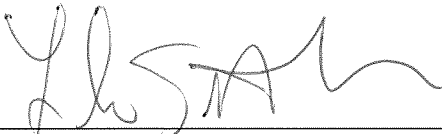
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Mount St. Mary's Hospital of Niagara Falls (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

MOUNT ST. MARY'S HOSPITAL OF NIAGARA FALLS

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950343.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that WNY Catholic Long Term Care, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

WNY CATHOLIC LONG TERM CARE, INC.

By: 

Name: Leonardo Sette-Camara, Esq.

Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950348.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

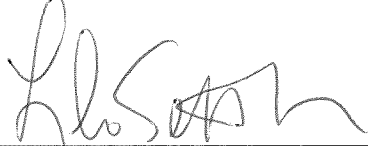
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that McAuley-Seton Home Care Corporation (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

McAULEY-SETON HOME CARE CORPORATION

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950351.1



March 23, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

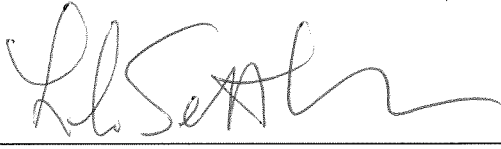
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Niagara Homemaker Services, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

NIAGARA HOMEMAKER SERVICES, INC.

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950358.1



March 24, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Catholic Health System Program of All-Inclusive Care for the Elderly, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

CATHOLIC HEALTH SYSTEM PROGRAM OF ALL-
INCLUSIVE CARE FOR THE ELDERLY, INC.

By: 

Name: Leonardo Sette-Camara, Esq.

Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950367.1

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel

Date: October 23, 2023

Subject: Rochester General Hospital Association, Inc. – Name Change

The attached package was prepared by Alexa Nagy, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

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

From: Alexa Nagy, Senior Attorney
Division of Legal Affairs, Bureau of Program Counsel

Date: October 23, 2023

Subject: Rochester General Hospital Association, Inc. – Name Change

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for Rochester General Hospital Association, Inc., Michael Stone, dated November 21, 2022;
- 3) A copy of the special meeting minutes of the Board of Directors of Rochester General Hospital Association, Inc., dated June 22, 2022, authorizing the change of corporate name and amendment of Certificate of Incorporation, with a proposed Restated Certificate of Incorporation;
- 4) A copy of the Corporate Bylaws Rochester General Hospital Association, Inc.;
- 5) An executed photocopy of the proposed Restated Certificate of Incorporation of Rochester General Hospital Association, Inc., signed by Jennifer Simson, as Authorized Person, dated November 18, 2022; and
- 6) A photocopy of the current Certificate of Incorporation for Rochester General Hospital Association, Inc., dated August 24, 1978, and filed on December 12, 1978, and Consent to File Letter of the Public Health Council for Rochester General Hospital Association, Inc., dated November 20, 1978.

Attachments.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks *KSM*
General Counsel

Date: October 23, 2023

Subject: Rochester General Hospital Association, Inc. – Name Change

Rochester General Hospital Association, Inc. (“RGHA”) requests Public Health and Health Planning Council (“PHHPC”) approval to change its corporate name and amend outdated information currently in its Certificate of Incorporation. Rochester General Hospital Association, Inc. was approved by PHHPC as an affiliate of The Rochester General Hospital to solicit contributions on behalf of The Rochester General Hospital, and PHHPC consented to the filing of its Certificate of Incorporation on November 17, 1978, which was filed with the NYS Department of State on December 12, 1978.

RGHA needs to and requests to amend its Certificate of Incorporation to change its corporate name and amend outdated information. Because the Department of Health and PHHPC previously approved RGHA’s Certificate of Incorporation, and the corporate name and the Certificate of Incorporation are now being amended, PHHPC approval of the Restated Certificate of Incorporation is required.

RGHA requests approval of the following amendments in its Restated Certificate of Incorporation:

1. To change the name of the Corporation to "Twig Association, Inc."
2. To replace a statement in Section 3 concerning the Corporation’s type with a statement that the Corporation is a charitable corporation under Section 201 of the Not-For-Profit Law pursuant to updates in law.
3. To amend Section 4 to delete the outdated illustrative list of affiliates of the Corporation’s beneficiary.
4. To amend Section 7 to update references to the Not-For-Profit Law.
5. To amend Section 8 to update statements required by the Internal Revenue Service.
6. To amend Section 13 to delete the city in which the office of the Corporation is to be located.
7. To delete Section 14, which contains an unnecessary provision regarding the territory in which the Corporation’s operations are principally conducted.
8. To amend Section 15 to renumber as Section 14, to add the designation of the Secretary of State as agent of the Corporation upon whom process against it may be served, and to update the address to which a copy of such process shall be mailed.
9. To delete Section 16, which contains unnecessary provisions concerning the number of directors and the identity of the initial directors of the Corporation.
10. To delete Section 17, which contains an unnecessary provision regarding the qualifications of the subscriber of the Certificate of Incorporation.
11. To delete Section 18, which contains unnecessary provisions concerning consents and approvals to be obtained prior to the delivery of the Certificate of Incorporation to the Department of State for filing.
12. To update references to the Internal Revenue Code.

Pursuant to NYS Not-for-Profit Corporation Law § 804 and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in corporate name and the amendments to outdated information, and the Restated Certificate of Incorporation of Rochester General Hospital Association, Inc. is in legally acceptable form.

Attachments.

November 21, 2022

Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: Change of Name – Rochester General Hospital Association, Inc. (the “Association”)

Dear Ms. Leonard:

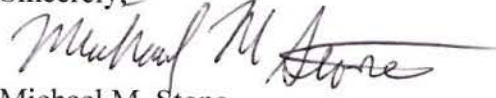
Enclosed is a Restated Certificate of Incorporation of the above-referenced Association, which is an affiliate of The Rochester General Hospital. The Association, a not-for-profit corporation, received Public Health Council approval to solicit contributions on behalf of The Rochester General Hospital at its meeting on November 17, 1978. Because the enclosed Restated Certificate of Incorporation changes the name of the Association, the approval of the Public Health and Health Planning Council is required pursuant to Section 600.11 of Title 10 of the New York Codes, Rules and Regulations.

The new name of the Association will be “Twig Association, Inc.” which capitalizes on the recognition of the Twigs name in the community. The Association is a direct descendent of the group of women from the Rochester Female Charitable Society (celebrating its 200th anniversary this year) who chartered Rochester City Hospital in 1847. The Board of Lady Managers was formed when the hospital opened in 1864 and in the early years managed every aspect of the hospital except for the medical department. In 1887, the first Twig was started by board member Lois Whitney. These groups of friends became the fundraising arm of what is now the Association. The Twig name has been used consistently in conjunction with the Association’s activities and financial contributions to the hospital including the Twig Gift Shop, the Twig Birthing Center, the Twig Auditorium, and most recently the Twig NICU. The Board of Directors of the Association determined that new name honors the history of the Association while providing continuity by keeping the word “Association” in the corporate name.

Please note that, in addition to changing the name, the Restated Certificate of Incorporation updates the Certificate of Incorporation to reflect changes in the Not-for-Profit Corporation Law as well as to remove an outdated illustrative list of affiliates of The Rochester General Hospital that the Association also supported or intended to support. A copy of the current Certificate of Incorporation is enclosed as well for your convenience.

I am available to answer any questions or to provide any necessary additional information.
Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Michael M. Stone". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Michael M. Stone
Assistant General Counsel

Enclosures

ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.
BOARD OF DIRECTORS
SPECIAL MEETING MINUTES
JUNE 22, 2022

PRESENT: Mmes. Baltzer, Gangemi, German, Heald, Rick, Roland, Schenck, Simson, Swogger, Trocano, all present via Zoom

EXCUSED: Mme. Klafehn

ABSENT: none

ADVISORY: none

CALL TO ORDER: Jennifer Simson called the meeting to order at 9:02am via Zoom.

PURPOSE OF SPECIAL MEETING called by RGHA President, Jennifer Simson

- To discuss and approve new name and tagline for RGHA

Governance: Robbie Baltzer reported:

- The Governance Committee recommends the following name and tagline be adopted for Rochester General Hospital Association:
 - Twig Association
 - “Serving Rochester General Hospital since 1864”*
- Discussion of the Pros (and no Cons identified) of making the name change include:
 - Shortens the name by 20 characters
 - Capitalizes on Twig name recognition
 - Maintains continuity by retaining Association identity
 - Retains Rochester General Hospital in the tagline, which will be on all printed materials
 - Adds a date in the tagline of 1864
 - Differentiates RGHA from The Foundations, and all of the R’s, such as Rochester General Hospital, and Rochester Regional Health
 - Also, many people already refer to us as the Twig Association
- Motion approved unanimously
- This information will be kept *confidential* until the corporation’s Class A Member approves the change and Hugh Thomas follows up with necessary legal items and Bylaw changes.

ADJOURNMENT: Jennifer Simson adjourned the meeting at 9:15am

Margaret Schenck
Recording Secretary

**AMENDED AND RESTATED CORPORATE BYLAWS
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.**

Effective: December 13, 2017

AMENDED AND RESTATED CORPORATE BYLAWS
OF
THE ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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**AMENDED AND RESTATED CORPORATE BYLAWS
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.**

ARTICLE I - MEMBERS

Section 1. Members

The Corporation shall have four (4) classes of members: Class A, Class B, Class C and Class D. The single Class A member shall be The Rochester General Hospital. Class B members shall consist of and be limited to those individuals who currently serve as members of the Board of Directors of the Corporation. Class C members shall consist of and be limited to those individuals who currently serve as Twig Presidents of the Twigs existing at any particular time; provided, however, that there shall be only one (1) Class C member from each Twig, and when a Twig has more than one person holding the office of President; one such person shall be designated in writing by the Twig to the Secretary of the Corporation as the Class C member of that Twig. Class D members shall consist of all other Twig members and Advisory members of the Board of Directors. The number of Class D members shall be unlimited.

Section 2. Rights of Members.

- (a) Except as otherwise specifically provided in these Bylaws, the Class A member shall be the only member with voting rights and shall be entitled to vote on all matters brought before the membership for action pursuant to the laws of New York or the Certificate of Incorporation or Bylaws of the Corporation.
- (b) Class C members or designated alternates shall have the limited and exclusive right to vote on matters submitted to them by the Board of Directors concerning the expenditure of funds raised by the Twigs.
- (c) Class B and D members shall be nonvoting members of the Corporation; provided, however, that the status of non-voting members shall not in any way limit the right of any Class B member to vote in his or her capacity as a director of the Corporation.

Section 3. Evidence of Membership.

Class C and Class D membership shall be evidenced by designation on a roster maintained by the Board of Directors.

ARTICLE II - MEETINGS OF THE MEMBERS OF THE CORPORATION

Section 1. Annual Meetings.

- (a) An annual meeting shall be held for the election of directors and the transaction of other business at any time determined by the Board of Directors in collaboration with the Class A member within six months after the close of each fiscal year.

- (b) The Board of Directors shall direct the President and the Treasurer to present at the annual meeting of the members an annual report verified by the President and Treasurer or by a majority of directors, or certified by an independent public or certified public accountant, showing in appropriate detail the following:
- i. The assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve month fiscal period ending not more than six months prior to said annual meeting;
 - ii. The principal changes in assets and liabilities, including trust funds, during said fiscal period;
 - iii. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period;
 - iv. The expenses or disbursements of the Corporation for both general and restricted purposes during said fiscal period; and
 - v. The number of members of the Corporation, any increase or decrease during the fiscal period, and the location of the current list of members' names and addresses.

The annual report shall be filed with the records of this Corporation, and a copy thereof shall be entered in the minutes of the annual meeting of the members.

Section 2. Special Meetings.

Special meetings of members for any purpose may be called at any time by the President or by a majority of the Board of Directors, and shall be called by the President or the Secretary at the written request of the Class A member. Such written request and the notice of the meeting shall state the purpose(s) for the meeting and shall indicate by whom the meeting is called. Dates and times of special meetings of the Class A member shall be determined in collaboration with the Class A member. Business transacted at a special meeting shall be confined to the purpose(s) stated in the notice of meeting.

Section 3. Place of Meetings.

Meetings of members shall be held at the principal office of the Corporation or at such other place, within or without the State of New York, as may be fixed by the Board of Directors, except that the Class A member shall fix the place of its meetings.

Section 4. Notice of Meetings.

- (a) Notice shall be given of each meeting of members, shall be in writing and shall state the place, date and hour of the meeting.
- (b) Formal written notice of each meeting of the members shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting, to each member entitled to vote at such meeting and to each director of the Class A member, except that the

directors of the Class A member need not be notified of a special meeting if the only item on the agenda of such special meeting is the expenditure of funds raised by the Twigs. Such notices shall be given to members and directors of the Class A member entitled to receive them either personally or by mail. If mailed, notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the recipient at his or her address as it appears in the record of directors or to such other address as the recipient shall have specified to the Secretary of the Corporation in writing.

- (c) Notice of a meeting need not be given to any member of the Corporation or director of the Class A member who submits a signed waiver of notice. The attendance of any voting member or director of the Class A member at a meeting, without protesting prior thereto or at its commencement the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

Section 5. Quorum and Adjourned Meetings.

- (a) The presence of the Class A member, as represented by the presence in person of a quorum of its Board of Directors, shall constitute a quorum for the transaction of business at any regular or special meeting of the membership, except that for the limited purposes of Class C voting, a quorum shall be the presence in person or by proxy of a majority of the Class C members.
- (b) Whether or not a quorum is present, the members present at a meeting who are entitled to vote on a pending matter may adjourn the meeting to another designated time and place, and it shall not be necessary to give notice of the adjourned meeting. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting.

Section 6. Organization.

At every meeting of the members the President, or, in his or her absence, the Vice-President, or in the absence of such officers, a person selected by the Class A member or by a majority of the members entitled to vote at such meeting shall act as chair of the meeting. The Recording Secretary or, in his or her absence, the Corresponding Secretary or, in his or her absence, a person selected by the Class A member or a majority of the members entitled to vote at such meeting shall act as secretary of the meeting.

Section 7. Voting.

- (a) Whenever any action is to be taken by the Class A member, it shall, except as otherwise provided by law or by the Certificate of Incorporation, be authorized by a majority of the votes cast by the directors of the Class A member at a duly convened meeting of the Class A member at which a quorum of the directors of the Class A member are present. Written notice of such actions, including a copy of any resolution(s), shall be provided promptly to the Secretary of this Corporation if the Secretary is not in attendance at the meeting for any reason.

- (b) Whenever any action is to be taken by the Class C members, it shall, except as otherwise required by law or by the Certificate of Incorporation, be authorized by a majority of the votes cast at a duly convened meeting of the Class C members at which a quorum of the Class C members is present. Written notice of such actions, including a copy of any resolution(s), shall be provided promptly to the Secretary of this Corporation if the Secretary is not in attendance at the meeting for any reason.
- (c) Any Class C member entitled to vote on any matter under these Bylaws may act by proxy in lieu of presence (individually or through a board quorum) at the meeting at which the vote is to be taken. Proxies must be in writing, signed by the voting member, and delivered to the chair or secretary prior to the end of the meeting at which the vote is taken. All executed proxy forms shall be filed with the minutes of the meeting,

ARTICLE III - BOARD OF DIRECTORS

Section 1. Power of Board and Qualification of Directors.

The Corporation shall be managed by its Board of Directors. Each director shall be at least eighteen years of age.

Section 2. Number and Terms of Office.

- (a) The Board of Directors shall consist of not less than three (3) nor more than twenty-five (25) directors. The exact size of the Board of Directors at any time shall be the number of directors then in office. The number of directors shall be determined from time to time by the Class A member, provided that no decrease in the number of directors shall shorten the term of any incumbent director. No employee of The Rochester General Hospital, Rochester Regional Health or any of Rochester Regional Health's other affiliates may serve as a director of this Corporation, and no more than one third of the directors of this Corporation may be an officer or director of any of the organizations designated in paragraph 4 of the Certificate of Incorporation of the Corporation.
- (b) The Board of Directors shall be divided into five (5) classes of approximately equal size, with the terms of one class of directors expiring each year on a rotating basis. All directors shall have a term of office of five (5) years or until their successors are elected and take Office; provided that a director may be elected to a term of less than five years if necessary for the purpose of maintaining approximately equal class sizes.
- (c) New directors to succeed directors whose terms are expiring shall be appointed by the Class A member at the annual meeting of members following nomination by the Corporation's Board of Directors. The Class A member shall not be obligated to approve the Board's nominee(s).
- (d) Directors may serve an unlimited number of terms in office.
- (e) Each director shall have one vote regarding any corporate action to be taken by the Board.

Section 3. Resignations and Removal of Directors.

- (a) Any director of the Corporation may resign at any time by giving written notice to the President or the Secretary of the Corporation, who shall forward a copy to the Secretary of the Class A member. Such resignation shall take effect at the time specified therein or if no time be specified, then on delivery to the President or Secretary of the Corporation.
- (b) Any director may be removed for cause by vote of a majority of the entire Board of Directors of the Corporation or with or without cause by the Class A member.

Section 4. Vacancies.

Positions on the Board within the permitted range that are or become unfilled for any reason may be filled by the Class A member at any time. The Board of Directors may nominate individual(s) to fill the unfilled seat(s); such nominations shall not be binding upon the Class A member. A director appointed to fill an unfilled seat between annual meetings shall hold office until the next annual meeting of the Corporation and until his or her successor is elected and qualified.

Section 5. Place of Meeting.

The Board of Directors may hold its meetings at the principal office of the Corporation, or at such place or places within or without the State of New York as the Board of Directors may determine.

Section 6. Annual Meeting.

As soon as practicable after the annual meeting of the Corporation concludes, the Board of Directors shall meet at the place of such annual meeting for the purposes of electing officers, appointing committees and transacting such other business as may be necessary or desirable. Such meeting may be held at any other time and place, provided that if it is so held, notice shall be given to each director as hereinafter provided for special meetings of the Board of Directors.

Section 7. Regular Meetings.

Monthly meetings of the Board of Directors shall be held at the principal office of the Corporation, no less than eight (8) times per year, unless otherwise designated by the Board. No Board meetings shall be required in July or August. Written notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting to each Board member.

Section 8. Special Meetings.

Special meetings of the Board of Directors shall be held whenever called by the President, or by the Recording Secretary upon the written request of five (5) directors or the Class A member. If notice is given in person or by telefax, e-mail or telephone, it shall be given not less than one (1) day before the meeting; if it is given by mail, it shall be given not less than five (5) days before the meeting,

Section 9. Notice of Meetings: Waiver of Notice.

- (a) Formal written notice of each meeting of the Board of Directors shall state the place, date and time of the meeting. Such notice shall be given to each director either personally or by mail, telefax or e-mail not less than the number of days in advance prescribed in these Bylaws for the type of meeting called. If mailed, notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the director at his or her address as it appears in the record of directors or to such other address as the director shall have specified to the Secretary of the Corporation in writing. If sent by telefax, notice is given when the sender receives confirmation that the transmission has been received by the recipient's telefax machine at a number provided by the recipient for such purpose. If e-mailed, notice is given when the sender effects electronic transmission to an e-mail address provided by the recipient for such purpose. In addition, notice may be given by telephone, provided that the information is conveyed to the director, an adult message taker or a voice mailbox at the director's telephone number in the records of the Corporation, and that a copy of the notice is promptly mailed to each director who is notified by telephone.
- (b) Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement the lack of notice to him or her.

Section 10. Quorum.

- (a) A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, except where otherwise required by law or these Bylaws.
- (b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice to any director.

Section 11. Action by the Board of Directors.

- (a) Each director shall be entitled to one vote on each matter properly submitted to the directors for action at any meeting of the Board. Unless otherwise required by law or these Bylaws, the vote of a majority of directors present at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board.
- (b) Any action required or permitted to be taken by the Board may be taken without a meeting if all directors consent in writing to the adoption of a resolution setting forth and authorizing the action. The resolution and written consent thereto by the Board shall be filed with the minutes of the proceedings of the Board.

Section 12. Organization of Meetings.

At each meeting of the Board of Directors, the President, or, in his or her absence, the Vice-President shall preside, or in the absence of such officers, a chair chosen by a majority of the directors present shall preside. The Recording Secretary or, in his or her absence, the

Corresponding Secretary, or in his or her absence, a person chosen by a majority of the directors present shall act as secretary of the meeting of the Board of Directors.

Section 13. Minutes.

The Recording Secretary shall maintain complete and accurate minutes of each member, Board and committee meeting. Said minutes shall reflect attendance and all business conducted, including: findings, conclusions, recommendations and resolutions adopted, and shall be maintained in the permanent records of the Corporation.

Section 14. Compensation.

Members of the Board of Directors shall receive no compensation for their services as directors of the Corporation but shall be reimbursed for the expenses reasonably incurred by them in the performance of their Corporation duties.

ARTICLE IV - COMMITTEES

Section 1. Standing Committees of the Board.

The Board of Directors, by resolution adopted by a majority of the entire Board, shall designate from among the directors standing committees of the Board. Each such standing committee shall consist of at least three Board members. Members of standing committees shall be appointed by and serve at the pleasure of the Board. The standing committees of the Board, until changed by the Board, shall include the following:

- (a) Executive Committee: Standing members of the Executive Committee shall be the President, Vice-President, Treasurer, Recording Secretary and Governance Chair of the Corporation. One additional member at large shall be recommended by the Nominating Committee. The Executive Committee shall transact all delegated and emergency business of the Board between its meetings. Any reference in these Bylaws to the Board of Directors shall also apply to the Executive Committee unless the context or an express provision otherwise provides. The Executive Committee shall have no authority as to the following matters:
- 1) The submission to members of any action requiring such members' approval under the law.
 - 2) The filling of vacancies in the Board or in any committee.
 - 3) The amendment or repeal of these Bylaws, or the adoption of new Bylaws.
 - 4) The amendment or repeal of any resolution of the Board unless, by its terms, it is so amendable or repealable.
 - 5) The expenditure of the assets of the Corporation.

- (b) Governance Committee: The Governance Committee shall oversee the general affairs of the Board, by ensuring Board processes, structures and roles are effective, and by equipping Board members with the appropriate tools and motivation to carry out his or her responsibilities.
- (c) Bylaws and Manuals Committee: The Bylaws and Manuals Committee, a sub-committee of the Governance committee, shall periodically review the Bylaws and manuals of the Corporation and make recommendations for amendments to the Board of Directors.
- (d) Nominating Committee: The Nominating Committee, a sub-committee of the Governance committee, shall nominate persons to serve as directors and officers of the Corporation and as committee chairs. The Nominating Committee shall also nominate one Board member to serve at large on the Executive Committee, and individuals from the Board to serve as advisory members of the Board.
- (e) Finance Committee: The Treasurer shall chair the Finance Committee. The Finance Committee shall advise the President and the Board of Directors concerning policies and procedures for the financial management of the assets of the Corporation including such matters as the budget and investments. The Finance Committee shall take those steps which are necessary or desirable to implement approved policies and procedures within the scope of authority delegated to it by the Board of Directors.
- (f) Audit Functions: If, at any time prior to July 1, 2021, the Corporation has revenues in excess of \$750,000, or if after July 1, 2021, the Corporation has revenues in excess of \$1,000,000, the directors who qualify as “Independent Directors” within the meaning of Section 102(21) of the Not-for-Profit Corporation Law shall act as the Audit Committee, which shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation’s financial statements in accordance with the duties set forth under Section 712-a of the Not-for-Profit Corporation Law. This committee may not be chaired by a Treasurer.

Section 2. Special Committees of the Board.

The Board of Directors may, by resolution adopted by a majority of the entire Board, designate from among the directors additional committees, each of which shall consist of at least three Board members. Such committees shall have such authority as is provided in the resolution designating the committee, except that such authority shall not exceed the authority conferred to the Executive Committee by Section 1(a) of this Article. Members shall be appointed by the Board and shall serve for the term designated in the resolution creating each Special Committee.

Section 3. Committees of the Corporation.

The Board of Directors, by resolution adopted by a majority of the entire Board, shall designate, from all classes of membership in the Corporation and from non-members of the Corporation, committees of the Corporation. Each such committee shall consist of at least one Board member and shall have authority as provided in the resolution designating the committee, except that no such committee shall have the authority to bind the Board of Directors. Members

of these committees shall be appointed annually by the Board of Directors. The committees of the Corporation, until changed by the Board, shall include the following:

- (a) Allocations Committee
- (b) Communications Committee
- (c) Nursing Practice and Education Committee
- (d) Patient Staff Library
- (e) Social Work Services Committee
- (f) Teaching Fellowship Committee
- (g) Twig Committee
- (h) Twig Gift Shop Committee
- (i) Vending Committee
- (j) Volunteer Service Committee

Section 4. Meetings.

Meetings of committees, of which no notice shall be necessary, shall be held at such time and place as shall be fixed by the respective committee chairs or by vote of a majority of all of the members of the committee. Written minutes of the proceedings of all meetings of each committee shall be kept by a member appointed by the committee chair and shall be reported at the next regular monthly meeting of the Board of Directors.

Section 5. Quorum and Manner of Acting.

Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of all of the members of the committee shall be the act of the committee. Any corporate action to be taken by a committee shall be taken at a meeting of the committee.

The procedures and manner of acting of the Executive Committee and of any other committee shall be governed by rules adopted by those committees, subject at all times to the directions of the Board of Directors.

Section 6. Annual Reports.

Annual reports shall be presented to the President by each committee chair prior to the Annual Meeting.

Section 7. Tenure of Members of Committees.

Each committee and every member thereof, except when specifically stated otherwise, shall serve at the pleasure of the Board.

ARTICLE V - OFFICERS

Section 1. Number and Salary.

The officers of the Corporation shall be a President, a Vice-President, a Treasurer, a Recording Secretary, a Corresponding Secretary, and such other officers as the Board of

Directors may in its discretion elect. No two offices may be held by the same person. Officers shall serve without salary.

Section 2. Term of Officers and Qualifications.

Those officers whose titles are specifically mentioned in Section 1 of this Article V shall be elected by the Board of Directors from its membership at the Annual Meeting of the Board. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each officer shall extend for one year after his or her election and until his or her successor is elected or appointed and qualified. All officers may be reelected with the exception of the President who may not serve more than two consecutive terms.

Section 3. Additional Officers.

Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may determine.

Section 4. Removal of Officers.

Any officer may be removed by the Board of Directors with or without cause, at any time.

Section 5. Resignation.

Any officer may resign at any time by giving written notice to the Board of Directors, or to the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then upon delivery.

Section 6. Vacancies

A vacancy in any office shall be filled by the Board of Directors. An officer appointed to fill a vacancy shall hold office until the next annual meeting of the Board of Directors and until his or her successor is elected and qualified.

Section 7. President

The President shall preside at all meetings of the Class B, Class C and Class D members, the Board of Directors, and the Executive Committee. The President shall act as the chief executive officer of the Corporation, and it shall be his or her duty to supervise generally the management of the affairs of the Corporation subject only to the supervision of the Board. He or she shall be a member ex-officio of all committees, with the exception of the Nominating Committee, which he or she may attend by invitation. The President, along with the chair of each committee, shall submit to the Board of Directors for final approval, a list of members for each committee selected in accordance with the rules for membership to the various committees set out in these Bylaws. The President shall also perform such other duties as may be assigned to him or her from time to time by the Board.

Section 8. Vice-President

In the absence or inability to act of the President, or if the office of President is vacant, the Vice-President shall perform the duties and exercise the powers of the President, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. He or she shall share with the President the responsibility of attending committee meetings. The Vice-President shall be responsible for legislation and education by arranging for speakers for meetings of the Board of Directors, and keeping abreast of current State and Federal legislation in the health field and informing the Board of important developments. The Vice-President shall also have such other powers and shall perform such other duties as may be assigned to him or her by the Board of Directors or the President.

Section 9. Treasurers.

There shall be three Treasurers:

- (a) Treasurer: The Treasurer shall keep and maintain the books of account and shall have overall charge, custody and responsibility for all funds and securities of the Corporation. He or she or his or her assistants shall deposit all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors. He or she shall, at all reasonable times, exhibit the Corporation's books and accounts to any director or member of the Corporation upon application at the office of the Corporation during ordinary business hours. He or she shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors or the President.
- (b) Twig Treasurer: It shall be the duty of the Twig Treasurer to keep accurate books and records of the funds raised annually by the various Twigs. He or she shall receive and deposit all Twig funds from the individual Twigs and disburses said funds in accordance with the direction of the Board of Directors.
- (c) Twig Shop Treasurer: It shall be the duty of the Twig Shop Treasurer to keep accurate books and records of the monthly revenues received and accounts payable by said Shop. He or she shall be in charge of all bank accounts containing the funds of said Shop and shall have authority to make withdrawals from said accounts. All accounts payable of the Twig Gift Shop shall be paid by the Twig Shop Treasurer from the accounts containing said funds. He or she shall disburse said funds in accordance with the direction of the Board of Directors.

Section 10. Recording Secretary.

It shall be the duty of the Recording Secretary to act as secretary of all meetings of the Board of Directors, the Class B, Class C and Class D members, and Executive Committee, and to keep the minutes of all such meetings at which he or she shall so act in a proper book or books to be provided for that purpose; he or she shall see that all notices required to be given by the Corporation are duly given and served; he or she shall prepare, or cause to be prepared, for use at meetings of the members a list or record of all members and shall certify such list; he or she shall

keep a current list of the Corporation's directors and officers and the residence addresses. The Secretary shall have custody of the minute book containing the minutes of meetings of the Class B, Class C and Class D members, the Class A member when serving in such capacity, the Board of Directors, the Executive Committee, and all other committees, and of all other contracts and documents which are not in the custody of the Treasurer of the Corporation, or in the custody of some other person authorized by the Board of Directors to have such custody. He or she shall attend to such correspondence as may be assigned to him or her and perform all the duties incidental to his or her office and such other duties as may be assigned to him or her by the Board of Directors or the President.

Section 11. Corresponding Secretary

The Corresponding Secretary shall conduct the correspondence of the Corporation and perform all other duties which may be assigned to him or her by the Board of Directors or the President.

Section 12. Appointed Officers

The Board of Directors may delegate to any officer or committee the power to appoint and to remove any subordinate officer, agent or employee.

ARTICLE VI - CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

Section 1. Execution of Contracts and Other Documents.

The Board of Directors, except as these Bylaws otherwise provide, may authorize the Treasurer, the President or the Vice-President, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances but, unless so authorized by the Board of Directors, or expressly authorized by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 2. Checks, Drafts, etc.

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall be determined by resolution of the Board of Directors or as expressly authorized by these Bylaws,

Section 3. Deposits.

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may by resolution select.

ARTICLE VII - OFFICE AND BOOKS

Section 1. Office.

The office of the Corporation shall be at such place in the City of Rochester, County of Monroe, State of New York, as the Board of Directors may determine.

Section 2. Books and Records.

There shall be kept at the office of the Corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the members, the Board of Directors, the Executive Committee and additional committees, (3) a current list of the directors and officers of the Corporation and their residence addresses, (4) a list or records containing the names and addresses of all members, (5) a copy of the certificate of incorporation, and (6) a copy of these Bylaws. The Secretary of the Corporation shall promptly forward to the Secretary of the Class A member copies of minutes of meetings of the Corporation's Board of Directors and Executive Committee when such minutes become available, as well as the lists of members, directors and officers as amended from time to time and the annual report.

ARTICLE VIII - INDEMNIFICATION, INSURANCE AND CONFLICTS OF INTEREST

Section 1. Indemnification and Insurance of Directors and Officers

- (a) The Corporation shall to the fullest extent permitted by law, indemnify its directors, officers, employees and other personnel.
- (b) The Corporation may purchase directors' and officers' liability insurance if authorized and approved by the Board of Directors.

Section 2. Conflicts of Interest.

The Board of Directors shall adopt a conflict of interest policy for the purpose of protecting the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation.

ARTICLE IX - GIFTS

Section 1. Acceptance of Gifts.

The Board of Directors may accept or reject on behalf of the Corporation any gift, grant, bequest or devise for the general purposes or for any special purpose of the Corporation. Unless the terms expressly provide otherwise, all gifts, grants, bequests and devises shall be deemed irrevocable.

Section 2. Conditions and Limitations

Any person who shall give, bequeath or devise any property to the Corporation may make such gift subject to such conditions and limitations as to the use of the principal or income as he or she may see fit and may specify such uses for the principal or the income as he or she

may desire, provided such conditions, limitations, specifications and provisions are consistent with the general purposes of the Corporation.

Section 3. Funds and Accounts.

All such property received and accepted by the Corporation shall become a part of the Corporation property and, subject to any limitations, conditions or requirements attached to it, may be commingled with other assets of the Corporation. However, such property shall or may be placed in any number of separate and distinct funds or accounts whenever the conditions, limitation, or instructions, of the gift, grant, bequest, or devise require a separate fund or account or whenever the Board of Directors or Executive Committee, in its judgment, determines that such property should be placed in a separate and distinct fund or account.

ARTICLE X - FISCAL YEAR

The fiscal year of the Corporation shall commence on January 1 of each calendar year and end on the last day of December.

ARTICLE XI - PARLIAMENTARY AUTHORITY

Roberts Rules of Order, Revised, shall govern at all meetings of the Class B, Class C and Class D members, the Board of Directors and committees, except to the extent that they conflict with applicable law or these Bylaws.

ARTICLE XII - AMENDMENTS

The Bylaws of the Corporation may be amended, repealed or adopted only by the Class A member of the Corporation, at any regular or special meeting of membership. The Board of the Corporation may propose amendments for approval by the Class A member, or the Class A member may amend, repeal or adopt Bylaws on its own initiative.

ARTICLE XIII - CONSTRUCTION

If there is any conflict between the provisions of the Certificate of Incorporation and these Bylaws, the provisions of the Certificate of incorporation shall govern.

RESTATED CERTIFICATE OF INCORPORATION

OF

ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned being a Director of ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC. (the "Corporation"), hereby certifies:

1. The name of the Corporation is ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

2. The Corporation's Certificate of Incorporation was filed by the Department of State on December 12, 1978, pursuant to the Not-for-Profit Corporation Law.

3. The Corporation's Certificate of Incorporation as previously amended from time to time is hereby further amended to effect the following amendments or changes as authorized in Section 801 of the Not-for-Profit Corporation Law of the State of New York:

- a. to change the name of the Corporation;
- b. to replace a statement concerning the Corporation's type with a statement that the Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law;
- c. to amend paragraph 4 of the Certificate of Incorporation to delete the outdated illustrative list of affiliates of the Corporation's beneficiary;
- d. to amend paragraph 7 of the Certificate of Incorporation to update references to the Not-for-Profit Corporation Law;
- e. to amend paragraph 8 of the Certificate of Incorporation to update statements required by the Internal Revenue Service;
- f. to amend paragraph 13 of the Certificate of Incorporation to delete the city in which the office of the corporation is to be located;
- g. to delete paragraph 14 of the Certificate of Incorporation, which contains an unnecessary provision regarding the territory in which the corporation's operations are principally conducted;
- h. to amend paragraph 15 of the Certificate of Incorporation to renumber as paragraph 14, to add the designation of the Secretary of State as agent of the corporation upon whom process against it may be served and to update the address to which a copy of such process shall be mailed;

i. to delete paragraph 16 of the Certificate of Incorporation, which contains unnecessary provisions concerning the number of directors and the identity of the initial directors of the corporation;

j. to delete paragraph 17 of the Certificate of Incorporation, which contains an unnecessary provision regarding the qualifications of the subscriber of the Certificate of Incorporation;

k. to delete paragraph 18 of the Certificate of Incorporation, which contains unnecessary provisions concerning consents and approvals to be obtained prior to the delivery of the Certificate of Incorporation to the Department of State for filing; and

l. to update references in the Certificate of Incorporation to the Internal Revenue Code.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full:

1. The name of the corporation is TWIG ASSOCIATION, INC.

2. The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law of the State of New York.

3. The corporation is a charitable corporation under Section 201 of the of the Not-for-Profit Corporation Law.

4. The corporation is organized and operated exclusively for charitable, scientific and educational purposes and to provide funds to or for the benefit of The Rochester General Hospital and to or for the benefit of any other health care organization or corporation affiliated with or related to The Rochester General Hospital by:

(a) soliciting, accepting, holding, investing, reinvesting and administering any gifts, bequests, devises, benefits of trusts and property of any sort, without limitation as to amount or value;

(b) using, disbursing or donating the income or principal thereof exclusively for the foregoing purposes;

(c) organizing, coordinating, conducting and participating in activities for the foregoing purposes; and

(d) performing any other act incidental to or connected with the foregoing purposes or in advancement thereof.

5. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive grants and contributions from public and private sources together with all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

6. Nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital services or health related services as defined in Article 28 of the Public Health Law.

7. Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law, Section 404 (b) – (n), (p) – (s) and (u) – (v).

8. The following language relates to the corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the corporation's purposes or powers set forth in paragraphs 4 and 5 hereof. The corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from Federal income tax under Section 501(c)(3) of such Code or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code.

9. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trustee, director, or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, officer or director of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

10. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office, except to the extent such activities may be carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended.

11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the not-for-profit affiliates of the corporation shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this section, an "affiliate" shall mean any not-for-profit organization which controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the corporation.

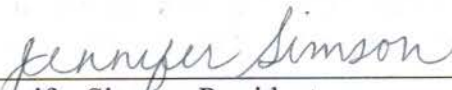
12. The corporation shall distribute its income for each taxable year at such time and in such manner as to not subject it to tax under Section 4942 of the Internal Revenue Code of 1986, as amended; and the corporation shall not (a) engage in any act of self-dealing in such manner as to subject the corporation to tax under Section 4941 of the Code; (b) retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or (d) make any expenditures in such a manner as to subject the corporation to tax under Section 4945 of the Code.

13. The office of the corporation is to be located in Monroe County, New York.

14. The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served, and the post office address to which the Secretary shall mail a copy of such process served is 1425 Portland Avenue, Rochester, New York 14621.

5. The amendment and restatement of the Certificate of Incorporation was authorized by the affirmative vote of a majority of all of the members of the corporation entitled to vote thereon, with such vote being at least equal to a quorum.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 18th day of November, 2022.



Jennifer Simson, President

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 9, 2011.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CERTIFICATE OF INCORPORATION
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.
PURSUANT TO SECTION 402
OF
THE NOT-FOR-PROFIT CORPORATION LAW

A530059

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to the Not-For-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the corporation is ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

2. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

3. The corporation is a Type B corporation, as defined in Section 201(b) of the Not-For-Profit Corporation Law of the State of New York.

4. The corporation is organized and operated exclusively for charitable, scientific and educational purposes and to provide funds to or for the benefit of the Rochester General Hospital and to or for the benefit of any other health care organization or corporation affiliated with/or related to Rochester General Hospital, including but not limited to the Northeast Health Center, Wayne County Rural Comprehensive Health Program at Sodus, Rochester Mental Health Center, Inc. and Hemophilia Center--Rochester Region, Inc. by:

(a) soliciting, accepting, holding, investing, reinvesting and administering any gifts, bequests, devises,

benefits of trusts and property of any sort, without limitation as to amount or value;

b) using, disbursing or donating the income or principal thereof exclusively for the foregoing purposes;

c) organizing, coordinating, conducting and participating in activities for the foregoing purposes; and

d) performing any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

5. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive grants and contributions from private and public sources together with all general powers enumerated in Section 202 of the Not-For-Profit Corporation Law.

6. Nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital services or health related services as defined in Article 28 of the Public Health Law.

7. Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(n) and (p)-(s).

8. Notwithstanding any other provision of these articles, the corporation is organized exclusively for

charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code.

9. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trustee, director, or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, officer or director of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets *on dissolution of the corporation*.

10. No substantial part of the activities of the corporation shall be carrying on propoganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office, except to the extent such activities may be carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended.

11. In the event of dissolution, all of the remaining assets of the property of the corporation shall, after deduction for necessary expenses thereof, be distributed exclusively to organizations described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, subject to an order of the Justice of the Supreme Court of the State of New York.

12. The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954, as amended; and the corporation shall not (a) engage in any act of self-dealing in such manner as to subject the corporation to tax under Section 4941 of the Code; (b) retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or (d) make any expenditures in such manner as to subject the corporation to tax under Section 4945 of the Code.

13. The office of the corporation is to be located in the City of Rochester, County of Monroe, State of New York.

14. The territory in which the corporation's activities are principally to be conducted is the County of Monroe, State of New York.

15. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 1425 Portland Avenue, Rochester, New York 14621.

16. The number of directors constituting the entire Board of Directors of the corporation shall not be less than three nor more than forty, as established by the By-Laws. The names and addresses of the initial directors until the first annual meeting are:

Mrs. Edward P. Curtis, Jr.
357 Cobbs Hill Drive
Rochester, New York

Mrs. Louis G. Glesmann
3280 Elmwood Avenue
Rochester, New York

Mrs. John R. Leinen
44 Wood Hill Road
Pittsford, New York

Mrs. William B. Morse
32 East Boulevard
Rochester, New York

17. The subscriber is of the age of eighteen years or over.

18. 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 to this certificate.

IN WITNESS WHEREOF, this certificate has been signed
by the subscriber this 24th day of August, 1978.

Robert C. Scutt

Robert C. Scutt
Two State Street
Rochester, New York 14614

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 24th day of August, 1978, before me
personally came ROBERT C. SCUTT, to me known to be the same
person described in and who executed the foregoing instrument
and he duly acknowledged to me that he had executed the same.

Janet Graves

JANET GRAVES
Notary Public in the State of New York
WAYNE COUNTY
Commission Expires March 30, 1981



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

November 20, 1978

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 17th day of November, 1978, I hereby certify that the Certificate of Incorporation of Rochester General Hospital Association, Inc. is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS

Secretary

Sent to: Robert C. Scutt, Esq.
Harris, Beach, Wilcox, Rubin and Levey
Two State Street
Rochester, New York 14614

cc: Mr. John S. Gilman, Chairman
Board of Directors
Rochester General Hospital
1425 Portland Avenue
Rochester, New York 14621

COUNCIL

NORMAN S. MOORE, M.D.

CHAIRMAN

GORDON E. BROWN

ROBERT J. COLLINS, M.D.

THOMAS P. DOWLING

MSGR. CHARLES J. FAHEY

JOSEPH R. FONTANETTA, M.D.

WILLIAM LEE FROST

MORTON P. HYMAN

JEANNE E. JONAS

MARY C. MC LAUGHLIN, M.D.

ROBERT H. RANGLES, M.D.

HOWARD A. RUSK, M.D.

JOHN M. WALSH

KENNETH W. WOODWARD, M.D.

COMMISSIONER OF HEALTH

ROBERT P. WHALEN, M.D.

EX OFFICIO



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N.Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

Telephone: 474-7206

NOV 22 1978

November 20, 1978

Robert C. Scutt, Esq.
Harris, Beach, Wilcox,
Rubin & Levey, Esqs.
2 State Street
Rochester, New York 14614

Dear Mr. Scutt:

Re: Rochester General Hospital Association, 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


JOHN E. LYNCH
Assistant Attorney General

8

SUPREME COURT
STATE OF NEW YORK


COUNTY OF MONROE

In the Matter of an Application for the :
Approval of the Certificate of Incorporation :
of Rochester General Hospital Foundation, Inc., :
a Not-for-Profit Corporation. :

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:
CITY OR ROCHESTER

ROBERT C. SCUTT, being duly sworn, deposes and says that he is an associate of the firm of Harris, Beach, Wilcox, Rubin and Levey and is the incorporator of Rochester General Hospital Association, Inc., and that no previous application for approval has been requested of any Court.


Robert C. Scutt

Sworn to before me this

27th day of November,

1978.


Notary Public

SUZANNE V. BECZ

NOTARY PUBLIC, State of N.Y., Monroe County
My Commission Expires March 30, 1979

9

SUPREME COURT
STATE OF NEW YORK

COUNTY OF MONROE

In the Matter of an Application for the
Approval of the Certificate of Incorporation
of Rochester General Hospital Association, Inc.,
a Not-for-Profit Corporation.

)
)
) APPROVAL OF
) CERTIFICATE OF
) INCORPORATION BY
) A JUSTICE OF THE
) SUPREME COURT
)
)

I, Marshall E. Livingston, a Justice of the
Supreme Court of the State of New York for the Seventh Judicial
District, in which the office of the corporation is to be
located, hereby approve the foregoing Certificate of Incorporation
of Rochester General Hospital Association, Inc. and
consent that the same be filed.

Dated: 11/28/78

Marshall E. Livingston
J.S.C.

10

CERTIFICATE OF INCORPORATION

OF

ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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A536859

STATE OF NEW YORK
DEPARTMENT OF STATE

~~11/11~~
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M. J. P. B.

DEC 12 1978

John Milione

DEPARTMENT OF STATE

over

J. Monroe
Type B

11/11/78

HARRIS, BEACH, WILCOX, RUBIN AND LEVEY
TWO STATE STREET
ROCHESTER, N. Y. 14614

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 9, 2011.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

F 950804000321

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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

The undersigned, being the President and Secretary of Rochester General Hospital Association, Inc., hereby certify:

1. The name of the corporation is: Rochester General Hospital Association, Inc.

2. The corporation's Certificate of Incorporation was filed by the Department of State on December 12, 1978 pursuant to 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 and is and shall hereafter remain a Type B corporation under Section 201 of said Law.

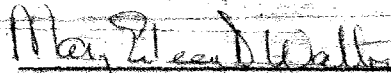
4. To specify the distributees of the assets and property of the corporation in the event of dissolution, the Certificate of Incorporation is hereby amended to delete in its entirety the text of Section 11 as previously stated and to substitute for it the following new Section 11:

11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the not-for-profit affiliates of the corporation shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this Section, an "affiliate" shall mean any not-for-profit organization which controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the corporation.

5. The foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of all the members of the corporation entitled to vote thereon, with such vote being at least equal to a quorum.

6. 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 such process is 1425 Portland Avenue, Rochester, New York 14621.

IN WITNESS WHEREOF, the undersigned have subscribed this Certificate of Amendment this 26th day of July, 1995 and hereby affirm that the statements contained herein are true under the penalties of perjury.



MARY EILEEN WALTER, President



NORMA Y. HORN, Secretary

ES10571

950804000321

Certificate of Amendment
of
Certificate of Incorporation
OR

Rochester General Hospital Association, Inc.
Under Section 803 of the Not-for-Profit
Corporation Law

FILED
AUG 4 12 02 PM '95

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 04 1995

3

TAXES
BY: *[Signature]*
Morse

56. 111 59 11

HARRIS, BEACH AND WILCOX
THE GRANITE BUILDING
130 EAST MAIN STREET
ROCHESTER, NEW YORK 14604-1608

950804000338

[Handwritten mark]



MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason W. Riegert, Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: September 28, 2023

Subject: VJJ Holding Company, LLC – Assumed Name Change

The attached package was prepared by Alexa Nagy, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

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

From: Alexa Nagy, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: September 28, 2023

Subject: VJJ Holding Company, LLC – Assumed Name Change

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for VJJ Holding Company, LLC, Michael Stringfellow, dated August 5, 2023;
- 3) A copy of the Amended Certificate of Assumed Name of VJJ Holding Company, LLC, signed by Michael Stringfellow, as authorized person;
- 4) A copy of the current Operating Certificate for VJJ Holding Company, LLC, effective April 1, 2009;
- 5) A copy of the original Articles of Organization of VJJ Holding Company, LLC, dated March 9, 2009, and filed on March 10, 2009;
- 6) A copy of the Certificate of Amendment of the Articles of Organization of VJJ Holding Company, LLC, dated March 13, 2009, and filed on March 16, 2009;
- 7) A copy of the original Certificate of Assumed Name for VJJ Holding Company, LLC, signed by Joseph Zwolak, as managing member, and filed on April 8, 2009;
- 8) A copy of the Certificate of Publication of VJJ Holding Company, LLC and accompanying documents, filed on June 25, 2009; and
- 9) A copy of the Biennial Statement of VJJ Holding Company, LLC for the March 1, 2021 filing period, and filed on August 4, 2022.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: September 28, 2023

Subject: VJJ Holding Company, LLC – Assumed Name Change

VJJ Holding Company, LLC requests Public Health and Health Planning Council (“PHHPC”) approval to amend its Certificate of Assumed Name. VJJ Holding Company, LLC filed an original Certificate of Assumed Name to do business as Woodhaven Nursing Home, which was approved by the NYS Department of State on April 8, 2009, and currently operates under this name as a residential health care facility pursuant to Article 28 of the Public Health Law.

VJJ Holding Company, LLC requests approval for an Amended Certificate of Assumed Name to change the assumed name of the entity. PHHPC approval of the Amended Certificate of Assumed Name is now requested and required.

VJJ Holding Company, LLC requests approval for an Amended Certificate of Assumed Name to change the assumed name of the entity from Woodhaven Nursing Home to Allegria Nursing & Rehabilitation Center of Port Jefferson.

Pursuant to NY Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in assumed name, and the Amended Certificate of Assumed Name of VJJ Holding Company, LLC is in legally acceptable form.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 14010.0001

August 5, 2023

By FedEx & EMAIL

Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
New York State Department of Health - Division of Legal Affairs
Room 2480, Corning Tower
Empire State Plaza
Albany, NY 12237
Vincent.DiCocco@health.ny.gov

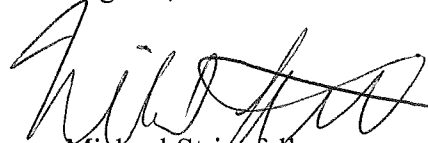
Re: Proposed Certificate of Amendment of Assumed Name for VJJ Holding Company
(dba Woodhaven Nursing Home (the "Home"))

Dear Mr. DiCocco:

I enclose a copy of the proposed Amended Certificate of Assumed name for the Home to operate as Allegria Nursing & Rehabilitation Center of Port Jefferson. The Home currently holds an operating certificate in the name referenced above and wishes to change the dba. For your reference, attached are the current certified copies of the charter documents and a copy of the current operating certificate. We request your approval to proceed with this assumed name amendment. Also enclosed is a self-addressed stamped envelope.

Kindly contact me at (516) 393-2578 or via e-mail at mstringfellow@garfunkelwild.com, if there is any additional information or additional supporting documentation that you require, or if you have any further questions.

Regards,



Michael Stringfellow
Paralegal

Enclosure

cc: Andrew Schulson, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
**DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE**
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

AMENDED CERTIFICATE OF ASSUMED NAME OF

VJJ HOLDING COMPANY, LLC

(Insert Current Real Name of Entity)

Under Section 130 of the General Business Law

1. The current real name of the entity is: VJJ Holding Company, LLC

2. *(Foreign entities only)* If applicable, the fictitious name the entity has agreed to use in New York State is: _____

3. If the current real name of the entity is different from the real name listed on the last preceding filing with respect to this assumed name, the previous real name of the entity listed was:

4. The assumed name listed on the last preceding filing with respect to this assumed name was: Woodhaven Nursing Home

5a. The date the original Certificate of Assumed Name was filed: April 8, 2009

5b. The DOS Assumed Name ID is: 418201

6. If applicable, the date the last Amended Certificate of Assumed Name was filed is:
N/A

7. The following change(s) are being made:

- Entity real name
- Assumed name
- Location of principal place of business
- County(ies) in which the entity does or intends to do business
- Location(s) where the entity carries on or conducts or transacts business in New York State

8. The text of the Certificate of Assumed Name is amended to read in its entirety as follows:

FIRST: The real name of the entity is:

VJJ Holding Company, LLC

SECOND: *(Foreign entities only)* If applicable, the fictitious name the entity has agreed to use in New York State is:

THIRD: The entity was formed or authorized to do business/conduct activities in New York State under the following law: *(Check one)*

- | | |
|---|--|
| <input type="checkbox"/> Business Corporation Law | <input type="checkbox"/> Not-for-Profit Corporation Law |
| <input type="checkbox"/> Education Law | <input type="checkbox"/> Revised Limited Partnership Act |
| <input type="checkbox"/> Insurance Law | <input type="checkbox"/> Other (specify law): _____ |
| <input checked="" type="checkbox"/> Limited Liability Company Law | |

FOURTH: The assumed name of the entity is:

Allegria Nursing & Rehabilitation Center of Port Jefferson

FIFTH: The location including number and street, if any, of the entity's principal place of business in New York State. If none, provide the out-of-state address of the entity's principal place of business:

1360 Route 112, Port Jefferson Station, New York 11776

SIXTH: The county(ies) in which the entity does business or intends to do business: *(Check the applicable box(es).)*

ALL COUNTIES

- | | | | | | | |
|--------------------------------------|-----------------------------------|-------------------------------------|-------------------------------------|---------------------------------------|---|--------------------------------------|
| <input type="checkbox"/> Albany | <input type="checkbox"/> Clinton | <input type="checkbox"/> Genesee | <input type="checkbox"/> Monroe | <input type="checkbox"/> Orleans | <input type="checkbox"/> Saratoga | <input type="checkbox"/> Tompkins |
| <input type="checkbox"/> Allegany | <input type="checkbox"/> Columbia | <input type="checkbox"/> Greene | <input type="checkbox"/> Montgomery | <input type="checkbox"/> Oswego | <input type="checkbox"/> Schenectady | <input type="checkbox"/> Ulster |
| <input type="checkbox"/> Bronx | <input type="checkbox"/> Cortland | <input type="checkbox"/> Hamilton | <input type="checkbox"/> Nassau | <input type="checkbox"/> Otsego | <input type="checkbox"/> Schoharie | <input type="checkbox"/> Warren |
| <input type="checkbox"/> Broome | <input type="checkbox"/> Delaware | <input type="checkbox"/> Herkimer | <input type="checkbox"/> New York | <input type="checkbox"/> Putnam | <input type="checkbox"/> Schuylar | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Cattaraugus | <input type="checkbox"/> Dutchess | <input type="checkbox"/> Jefferson | <input type="checkbox"/> Niagara | <input type="checkbox"/> Queens | <input type="checkbox"/> Seneca | <input type="checkbox"/> Wayne |
| <input type="checkbox"/> Cayuga | <input type="checkbox"/> Erie | <input type="checkbox"/> Kings | <input type="checkbox"/> Oneida | <input type="checkbox"/> Rensselaer | <input type="checkbox"/> Steuben | <input type="checkbox"/> Westchester |
| <input type="checkbox"/> Chautauqua | <input type="checkbox"/> Essex | <input type="checkbox"/> Lewis | <input type="checkbox"/> Onondaga | <input type="checkbox"/> Richmond | <input checked="" type="checkbox"/> Suffolk | <input type="checkbox"/> Wyoming |
| <input type="checkbox"/> Chemung | <input type="checkbox"/> Franklin | <input type="checkbox"/> Livingston | <input type="checkbox"/> Ontario | <input type="checkbox"/> Rockland | <input type="checkbox"/> Sullivan | <input type="checkbox"/> Yates |
| <input type="checkbox"/> Chenango | <input type="checkbox"/> Fulton | <input type="checkbox"/> Madison | <input type="checkbox"/> Orange | <input type="checkbox"/> St. Lawrence | <input type="checkbox"/> Tioga | |

SEVENTH: The location including number and street, if any, of each place where the entity carries on, conducts or transacts business in New York State: *(The address(es) must include a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph SIXTH.)* If none, check this box

1360 Route 112, Port Jefferson Station, New York 11776

Print or Type Michael Stringfellow
Name of Signer: _____

Signature: _____



Capacity of Signer (Check one): Authorized Person Officer of the Corporation General Partner of the Limited Partnership
 Member of the Limited Liability Company Manager of the Limited Liability Company

AMENDED CERTIFICATE OF ASSUMED NAME OF

VJJ HOLDING COMPANY, LLC

(Insert Current Real Name of Entity)

Under Section 130 of the General Business Law

Filer's Name and Mailing Address:

Michael Stringfellow, Paralegal

Name:

Garfunkel Wild, P.C.

Company, if Applicable:

111 Great Neck Road, 6th Floor

Mailing Address:

Great Neck, Ny 11021-5406

City, State and Zip Code:

NOTES:

1. This form was prepared by the New York State Department of State. You are not required to use this form. You may draft a form or obtain a form from a legal form company. If this form is not suitable for your needs, you may draft your own form.
2. **Instructions for signing:**
If a corporation, by an officer; if a limited partnership, by a general partner or; if a limited liability company, by a member or manager. An authorized person or attorney-in-fact for such corporation, limited partnership or limited liability company may also sign the certificate.
3. The Department of State recommends that this certificate be prepared under the guidance of an attorney.
4. **Filing Fee:**
 - a. Limited Liability Companies \$25.
 - b. Limited Partnerships - \$25.
 - c. Corporations - \$25 plus the additional fee for each county. The additional fee for each county within New York City (Bronx, Kings, New York, Queens and Richmond) is \$100. The additional fee for each county outside New York City is \$25.
5. Make checks are payable to the "Department of State".
6. All checks over \$500 must be certified.

For Office Use Only

Facility Id. 908
Certificate No. 5151323N

Certified Beds - Total 143
RHC 143

State of New York
Department of Health
Office of Primary Care and Health Systems Management



OPERATING CERTIFICATE
Residential Health Care Facility - SNF

Effective Date: 04/01/2009
Expiration Date: NONE

Woodhaven Nursing Home
1360 Route 112
Port Jefferson Station, New York 11776

Operator: VIJ Holding Company, LLC
Operator Class: Proprietary LLC

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Baseline

Keith W. Lewis

20161229 Deputy Director Office of Primary Care and Health Systems Management

Howard Zucker M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 090310000492 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

090310000492

BW13

**ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC**

Under Section 203 of the Limited Liability Company Law.

FIRST: The name of the limited liability company is **VJJ HOLDING COMPANY, LLC.**

SECOND: The county within the state in which the office of the limited liability company is to be located is Suffolk.

THIRD: The Company does not have a specific date of dissolution in addition to the events of dissolution set forth by law.

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

1360 Route 112
Port Jefferson Station, New York 11776

FIFTH: The effective date of the Articles of Organization shall be the date of filing with the Secretary of State.

SIXTH: The limited liability company is to be managed by 1 or more members.

090310000492

IN WITNESS WHEREOF, this certificate has been subscribed to this 9th day of March, 2009 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

Lawrence A. Kirsch

Lawrence A. Kirsch, Organizer

090310000492

6/2/13
DRAWDOWN

10/5/08

ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC

FILED
2009 MAR 10 PM 12:01

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 10 2009

TAXS _____

BY: MS

Filed by:

Enrico Scarda, P.C.
38 Kings Highway
Hauppauge, New York 11788

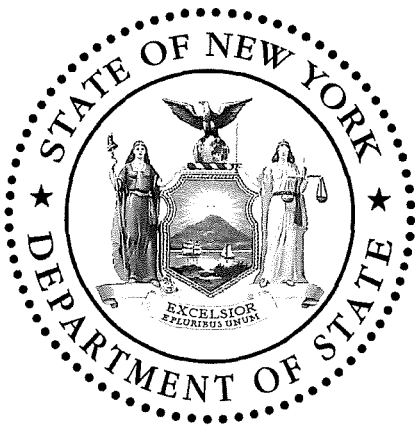
2009 MAR 10 AM 11:12

RECEIVED

045

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 090316000093 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

090316000093

GWB

**CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC**

Under Section 211 of the Limited Liability Company Law.

FIRST: The name of the limited liability company is **VJJ HOLDING COMPANY, LLC**.

SECOND: The date of filing of the articles of organization is March 10, 2009.

THIRD: The amendment effected by this certificate is to change the address for service of process, the manner in which the limited liability company is to be managed and to add provisions to the articles of organization.

Paragraph FOURTH of the articles of organization is hereby amended to read:

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

Duane Morris LLP
380 Lexington Avenue
New York, New York 10168
Attn: Kathleen Cheney, Esq.

Paragraph SIXTH of the articles of organization is hereby amended to read:

SIXTH: The limited liability company shall be managed by one or more members and neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the

prior approval of the Department of Health.

Paragraph SEVENTH and EIGHTH are hereby added to the articles of organization as follows:

SEVENTH: The powers and purposes of the Company are limited to the ownership and operation of a skilled nursing facility at 1360 Route 112, Port Jefferson Station, County of Suffolk, State of New York, pursuant to the provisions of Article 28 of the New York State Public Health Law; and to carry out such auxiliary matters and do such things as are related to the operation of such facility.

EIGHTH: Notwithstanding anything in this Articles of Organization or the Operating Agreement to the contrary, transfers, assignments or other dispositions of membership interests or voting rights shall be effectuated in accordance with Public Health Law Section 2801-(a)(4)(b).

IN WITNESS WHEREOF, this certificate has been subscribed to this 13th day of March, 2009 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

Lawrence A. Kirsch

Lawrence A. Kirsch, Authorized Person

6013

090316000093

BRANDDOWN

CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 16 2009

Text
BY: S. Scarda

Filed by:

Enrico Scarda, P.C.
38 Kings Highway
Hauppauge, New York 11788

2009 MAR 16 AM 9:31

FILED

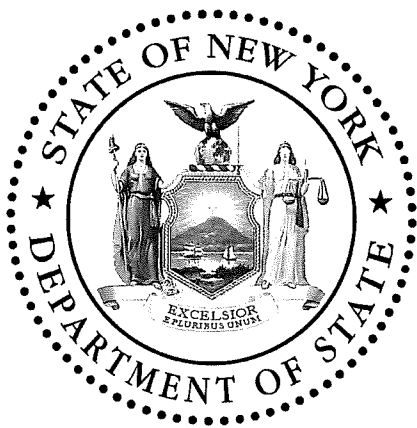
2009 MAR 13 PM 3:14

RECEIVED

101

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 20090408004 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 05, 2023.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

200904080 04

NYS Department of State
Division of Corporations, State Records and UCC
41 State Street, Albany, NY 12231-0001
www.dos.state.ny.us

Certificate of Assumed Name
Pursuant to General Business Law, §130

1. NAME OF ENTITY

VJJ HOLDING COMPANY, LLC

1W6-14

1a. FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

Business Corporation Law

Limited Liability Company Law

Education Law

Not-for-Profit Corporation Law

Insurance Law

Revised Limited Partnership Act

Other (specify law):

3. ASSUMED NAME

WOODHAVEN NURSING HOME

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

1360 ROUTE 112

Port Jefferson Station, N.Y. 11776

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Genesee	Monroe	Orleans	Saratoga	Tompkins
Allegany	Columbia	Greene	Montgomery	Oswego	Schenectady	Ulster
Bronx	Cortland	Hamilton	Nassau	Otsego	Schoharie	Warren
Broome	Delaware	Herkimer	New York	Putnam	Schuyler	Washington
Cattaraugus	Dutchess	Jefferson	Niagara	Queens	Seneca	Wayne
Cayuga	Erie	Kings	Oneida	Rensselaer	Steuben	Westchester
Chautauqua	Essex	Lewis	Onondaga	Richmond	Suffolk	Wyoming
Chemung	Franklin	Livingston	Ontario	Rockland	Sullivan	Yates
Chenango	Fulton	Madison	Orange	St. Lawrence	Tioga	

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME.

Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county(ies) circled in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

1360 Route 112

Suffolk County

Port Jefferson Station, N.Y. 11776

No New York State Business Location

20090408004

1W6-14

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an attorney-in-fact or authorized person for such corporation, limited partnership, or limited liability company.

Joseph Zwolak / Managing Member

s/ Joseph Zwolak

Name and Title

Signature

CERTIFICATE OF ASSUMED NAME
OF
VJJ HOLDING COMPANY, LLC

(Insert Entity Name)

Pursuant to §130, General Business Law

2009 APR -8 AM 8:14

FILED

FILER'S NAME AND MAILING ADDRESS Enrico Scarda, P.C.

38 Kinas Highway

Hauppauge, N.Y. 11788

090310000492

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

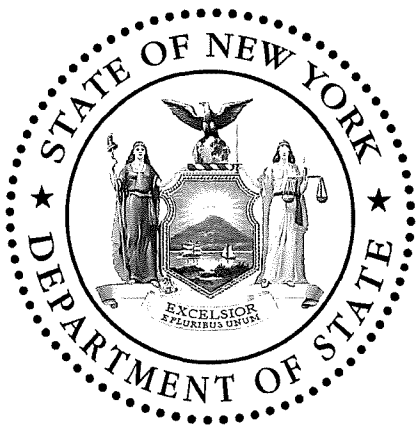
STATE OF NEW YORK
DEPARTMENT OF STATE

APR 08 2009
915261
SB

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 090625000524 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

090625000524 ORIGINAL

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

CERTIFICATE OF PUBLICATION
OF
VJJ HOLDING COMPANY, LLC

(Name of Domestic Limited Liability Company)

Under Section 206 of the Limited Liability Company Law

The undersigned is the member *(Title*)*
of VJJ HOLDING COMPANY, LLC

(Name of Domestic Limited Liability Company)

If the name of the limited liability company has changed, the name under which it was
organized is: _____

The articles of organization were filed by the Department of State on: 3/10/09

The published notices described in the annexed affidavits of publication contain all of the
information required by Section 206 of the Limited Liability Company Law.

The newspapers described in such affidavits of publication satisfy the requirements set forth in
the Limited Liability Company Law and the designation made by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

6/12/09 *(Date)*
X Joseph A. Zwolak *(Signature)*
JOSEPH ZWOLAK
(Type or Print Name)

* This certificate must be signed by a member, manager, authorized person or attorney-in-fact. If the certificate is signed by an attorney-in-fact, include the name and title of the person for whom the attorney-in-fact is acting. (Example, John Smith, attorney-in-fact for Robert Johnson, member.)

NEWSDAY

AFFIDAVIT OF PUBLICATION

ENRICO BENNETT
38 KINGS HIGHWAY
HAUPPAUGE, NY
11788

Under Section 206 of the Limited Liability Company Law

STATE OF NEW YORK)

SS.:

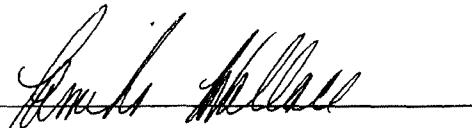
COUNTY OF SUFFOLK)

Legal Notice No. 16104814

The undersigned is the publisher of **Newsday**, a *daily* newspaper printed in Melville, County of Suffolk, State of New York, and circulated in Nassau, Suffolk Queens and Bronx Counties.

A Legal Notice regarding VJJ Holding Company, LLC was published in said newspaper once in each week for six successive weeks, commencing on 4/6/2009 and ending on 5/11/2009. The text of the notice as published in said newspaper is as set forth below or in the annexed exhibit. This newspaper has been designated by the Clerk of Suffolk County for this purpose.

By: _____



Tamika Wallace

SWORN to before me this
13th Day of May 2009.

“Authorized Designee of Tim Knight, Publisher of Newsday”



Guy P. Wasser
Notary Public, State of New York
No. 01WA6045924
Commission Expires 08/07/2010
Qualified in Suffolk County

Legal Notice 16104814

Notice of formation of VJJ Holding Company, LLC, a limited liability company. Art. of Org. filed with the Secretary of State of the State of NY on 3/10/09. Office located in Suffolk. SSNY has been designated for service of process. SSNY shall mail copy of any process served against the LLC to VJJ Holding, LLC 1360 Rte 112, Port Jefferson Station NY 11776. Purpose: any lawful purpose.

16104814 ENRICO SCARDA Th 5.14.9 09:42

Affidavit of Publication Under Section 206 of the Limited Liability Company Law

State of New York, County of Suffolk, ss.:

The undersigned is the publisher of the LONG ISLAND ADVANCE, a weekly newspaper published in Patchogue, New York.

A notice regarding VJJ Holding Company, LL

was published in said newspaper once in each week for six successive weeks, commencing on 4/9/09 and ending on 5/14/09. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Suffolk County for this purpose.

Notice of formation of VJJ Holding Company, LLC, a limited liability company. Art. of Org. filed with the Secretary of State of the State of NY on 3/10/09. Office located in Suffolk. SSNY has been designated for service of process. SSNY shall mail copy of any process served against the LLC to VJJ Holding, LLC 1360 Rte 112, Port Jefferson Station, NY 11776. Purpose: any lawful purpose.

LIA, 59643, 4/9, 16, 23, 30 - 5/7, 14

By: Annette Tarver

ANNETTE TARVER

Authorized Designee of John T. Tuthill, III,
Publisher of The Long Island Advance
Newspaper

Sworn to before me this
14TH day of MAY 2009



Notary Public

VICKI ANN MORALES
Notary Public, State of New York
01M04968036, Suffolk County
Commission Expires April 19, 2010

.090625000 524.

CERTIFICATE OF PUBLICATION
OF
VJJ HOLDING COMPANY, LLC

(Name of Domestic Limited Liability Company)

Under Section 206 of the Limited Liability Company Law

Filed by: ENRICO SCARDA, P.C.
(Name)
38 KINGS HIGHWAY
(Mailing Address)
HAUPPAUGE NY 11788
(City, State and ZIP Code)

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUN 25 2009

TAX \$ _____
BY: Amu

Note: This form was prepared by the New York State Department of State for filing a certificate of publication for a domestic limited liability company. You are not required to use this form. You may draft your own form or use forms available from legal stationery stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. This certificate of publication, with the affidavits of publication of the newspapers annexed thereto, must be submitted with a \$50 filing fee payable to the Department of State.

(For office use only)

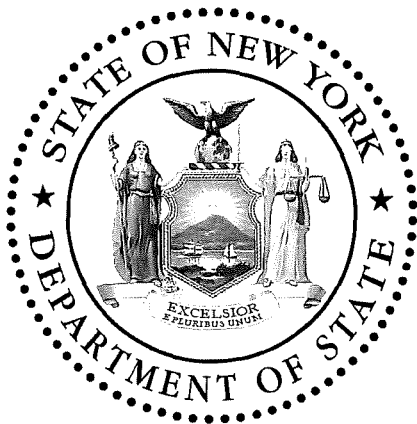
Attach this page after the affidavits of publication.

568

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 220804001477 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Biennial Statement

NYS Department of State
Division of Corporations, State Records &
Uniform Commercial Code
<http://www.dos.ny.gov>

BUSINESS NAME: VJJ HOLDING COMPANY, LLC
FILING PERIOD: 3/1/2021 12:00:00 AM

Part 1 - Service of Process Address (Address must be within the United States or its territories)

Name

THE LLC

Address Line 1

1360 ROUTE 112

Address Line 2

City

PORT JEFFERSON STAT.

State

NY

Zip Code

11776

Signer Information

I affirm that the statements contained herein are true to the best of my knowledge, that I am authorized to sign this Biennial Statement and that my signature typed below constitutes my electronic signature.

Electronic Signature

BRENDAN KOMBOL

Capacity of Signer

AUTHORIZED PERSON



MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: September 15, 2023

Subject: Proposed Dissolution of DOJ Dialysis Center Corp.

The attached package was prepared by Alexa Nagy, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

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

From: Alexa Nagy, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: September 15, 2023

Subject: Proposed Dissolution of DOJ Dialysis Center Corp.

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel requesting approval of the proposed Certificate of Dissolution of DOJ Dialysis Center Corp., dated September 5, 2023;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of DOJ Dialysis Center Corp.;
- 4) A photocopy of the Certificate of Incorporation for DOJ Dialysis Center Corp., dated October 1, 2002, and filed on May 1, 2003, and Consent to File Letter of the Public Health Council for DOJ Dialysis Center Corp., dated April 8, 2003;
- 5) A copy of the Corporate Bylaws of DOJ Dialysis Center Corp.;
- 6) An executed, proposed Plan of Dissolution and Certificate of Dissolution of DOJ Dialysis Center Corp.;
- 7) A copy of the Resolutions of the Board of Directors of DOJ Dialysis Center Corp., dated May 1, 2019, approving and authorizing the dissolution;
- 8) An executed photocopy of the Operating Certificate for DOJ Dialysis Center Corp. as a Diagnostic and Treatment Center; and
- 9) A photocopy of a letter from the Deputy Commissioner of the Office of Health Systems Management, dated December 7, 2011, conditionally approving the site closure plan for DOJ Dialysis Center Corp.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: September 15, 2023

Subject: Proposed Dissolution of DOJ Dialysis Center Corp.

DOJ Dialysis Center Corp. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

DOJ Dialysis Center Corp. was approved by the Public Health Council when PHHPC consented to the filing of its Certificate of Incorporation on April 8, 2003, which was filed with the NYS Department of State on May 1, 2003.

DOJ Dialysis Center Corp. was the licensed operator of a Diagnostic and Treatment Center to provide chronic renal dialysis services, located at 1160 Teller Avenue in the County of the Bronx, New York. DOJ Dialysis Center Corp. is dissolving because its operations have been dormant since 2013. DOJ Dialysis Center Corp. largely operated in support of its affiliate, Daughters of Jacob Support Organization, Inc., f/k/a Daughters of Jacob Nursing Home Company, Inc., a New York Not-for-Profit corporation (“DOJ Nursing Home”). DOJ Nursing Home disposed of substantially all of its assets and ceased operations in 2018 and is in the process of winding down its business. As such, DOJ Dialysis Center Corp. has no current operations and reasonably anticipates that it will not undertake operations at any point in the future. In light of this, DOJ Dialysis Center Corp.’s directors have deemed it in the best interests of DOJ Dialysis Center Corp. to dissolve. DOJ Dialysis Center Corp. has no assets or liabilities.

The Board of Directors of DOJ Dialysis Center Corp. approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on May 1, 2019.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of St. Teresa’s Nursing Home, Inc. and resolutions of the board of directors of DOJ Dialysis Center Corp., authorizing the dissolution, are included for PHHPC’s review. A letter from the legal counsel for DOJ Dialysis Center Corp. advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution of DOJ Dialysis Center Corp.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

350 BEDFORD STREET • STAMFORD, CONNECTICUT 06901

TEL (203) 316-0483 • FAX (203) 399-0505

www.garfunkelwild.com

FILE NO.: 12819.0004

September 5, 2023

By FedEx & EMAIL

Vincent DiCocco, Senior Attorney

Bureau of Program Counsel

New York State Department of Health - Division of Legal Affairs

Room 2480, Corning Tower

Empire State Plaza

Albany, NY 12237

Vincent.DiCocco@health.ny.gov

Re: Request for Consent for Dissolution of DJ Dialysis Center Corp. (the "Corporation").

Dear Vincent:

Enclosed please find for your review and approval, a copy of the Verified Petition for the approval of the Certificate of Dissolution submitted to the NY Attorney General's Office in connection with the dissolution of DOJ Dialysis Center Corp (the "Corporation"). The original Verified Petition includes a copy of the Certificate of Incorporation and any amendments, a copy of the Unanimous Written Consent of the Board of Directors; the original Plan of Dissolution, a copy of the operating certificate and the original Certificate of Dissolution for DOJ Dialysis Center Corp.

Kindly review and let me know if you will additional information or an attestation from the Corporation to proceed with your review for consent. Please note that this entity has been defunct and non-operational since 2013. If acceptable please provide consent to dissolve and return in the self-addressed envelope which is enclosed.

NEW YORK

NEW JERSEY

CONNECTICUT

September 5, 2023
Page 2

Kindly contact me at (516) 393-2578 or via e-mail at mstringfellow@garfunkelwild.com, if there is any additional information or additional supporting documentation that you require, or if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Stringfellow', with a long horizontal flourish extending to the right.

Michael Stringfellow
Paralegal

Enclosure
cc: Nicole Gade, Esq.

GARFUNKEL WILD, P.C.

----- X
 In the Matter of the Application of :
 DOJ Dialysis Center Corp., :
 For Approval of Certificate of : VERIFIED PETITION
 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
 28 Liberty Street
 New York, New York 10005

Petitioner, DOJ Dialysis Center Corp. (the "corporation"), by the undersigned director of the corporation, for its Verified Petition alleges:

1. DOJ Dialysis Center Corp., whose principal address is located in the county of Bronx, was incorporated pursuant to New York's Not-for-Profit Corporation Law on May 1, 2003. A copy of the Certificate of Incorporation, any amendments thereto, and the complete and current By-laws are attached as Exhibit A.

2. The names, addresses and titles of the corporation's directors and officers are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Henry I. Burr	Director	130 Sunrise Avenue Apt. 304W Palm Beach, FL 33480
Gerald Gordon	Director & Acting Secretary	25 Washington Lane, #733 Wyncote, PA 19095

Vacant

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation at paragraph 4 thereof and are as follows:

to provide chronic renal dialysis services, and other related services, to residents of local facilities, as well as members of the community, who have end-stage renal disease.

4. The corporation is a charitable corporation.

5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit B (the "Plan").

6. The corporation is dissolving because its operations have been dormant since 2013. The corporation largely operated in support of its affiliate, Daughters of Jacob Support Organization, Inc., f/k/a Daughters of Jacob Nursing Home Company, Inc., a New York Not-for-Profit corporation (“DOJ Nursing Home”). DOJ Nursing Home disposed of substantially all of its assets and ceased operations in 2018 and is in the process of winding down its business. As such, the corporation has no current operations and reasonably anticipates that it will not undertake operations at any point in the future. In light of this, the corporation’s directors have deemed it in the best interests of the corporation to dissolve.
7. The Board of Directors by unanimous written consent dated May 1, 2019 approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit C.
8. The corporation does not have any members.
9. The corporation has no assets or liabilities.
10. Any incidental liabilities of the corporation incurred in connection with its winding up and dissolution are anticipated to be di-minimus and shall be paid on its behalf by contributions from affiliates of the corporation.
11. The corporation is unaware of any ongoing or completed audit or inquiry by the Internal Revenue Service (“IRS”) in the past three years or if the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.
12. The corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.
13. Other than the approval of the Attorney General, no approval of the dissolution of the corporation is required by any governmental body or officer.
14. 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.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of DOJ Dialysis Center Corp., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 1st day of May, 2019, by

A handwritten signature in cursive script, appearing to read "Gerald Gordon", written over a horizontal line.

Signature

Name: Gerald Gordon

Title: Acting Secretary & Director

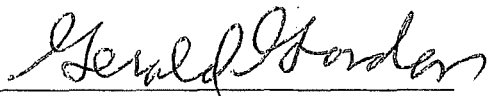
----- X
In the Matter of the Application of :
DOJ Dialysis Center Corp., :
For Approval of Certificate of :
Dissolution pursuant to :
Section 1002 of the Not-for-Profit :
Corporation Law. :
----- X

Verification and Certification

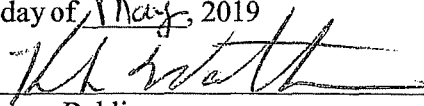
STATE OF NEW YORK)
 :SS.:
COUNTY OF NEW YORK

Gerald Gordon, being duly sworn, deposes and says:

I am a duly elected and acting Director and the duly named and acting Secretary of DOJ Dialysis Center Corp., the corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I 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 and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors.



Gerald Gordon

Sworn to before me this
23 day of May, 2019


Notary Public

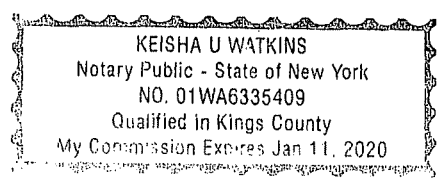
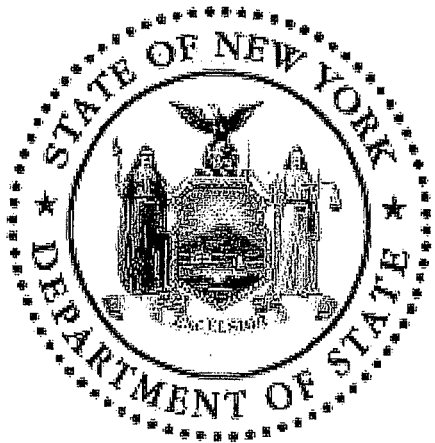


EXHIBIT A

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for DOJ DIALYSIS CENTER CORP., File Number 030501000365 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 26, 2019.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 1911261046 To verify the authenticity of this document you may access the
Division of Coporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

F030501000 365

**CERTIFICATE OF INCORPORATION
OF
DOJ DIALYSIS CENTER CORP.**

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

THE UNDERSIGNED, who is over the age of eighteen (18) years, for the purpose of forming a corporation pursuant to Section 402 of the Not-For-Profit Corporation Law of New York, does hereby state:

FIRST: The name of the corporation is DOJ Dialysis Center Corp. (hereinafter, the "Corporation").

SECOND: The Corporation is not formed for pecuniary profit or financial gain.

THIRD: The Corporation shall be a Type C corporation pursuant to Section 201 of the Not-For-Profit Law.

FOURTH: The purposes for which the Corporation is formed, and the lawful public or quasi-public objective which the business purposes of the corporation will achieve, is to provide chronic renal dialysis services, and other related services, to residents of local facilities, as well as members of the community, who have end-stage renal disease.

To have in furtherance of its not-for-profit purposes, all of the powers conferred upon corporations organized under the Not-For-Profit Corporation Law subject to any limitations thereof contained in this Certificate of Incorporation or in the laws of the State of New York.

FIFTH: The office of the corporation is to be located in the County of Bronx, State of New York.

SIXTH: The Corporation shall be operated by a board of directors, the number of which is to be no less than three (3).

SEVENTH: The names and addresses of the persons constituting the initial Board of Directors of the Corporation are:

	<u>Names</u>	<u>Residences</u>
1.	Howard S. Modlin	1120 Park Avenue, # 14C New York, New York 10128
2.	Henry I. Burr	6 Stonewall Lane Mamaroneck, New York 10543
3.	David Dworksy	320 West 90th Street New York, New York 10024

EIGHTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address of the Corporation to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: c/o Weisman Celler Spett & Modlin, P.C., 445 Park Avenue, 15th Floor, New York, New York, 10022-2606, Attention: Howard S. Modlin, Esq.

NINTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the purposes, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent federal tax laws and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

TENTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, director, officers, or other private persons, except that the corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distribution in furtherance of its purposes as set forth in this certificate of incorporation.

ELEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as

otherwise provided by Internal Revenue Code Section 501(h), and the Corporation shall not participate in, or intervene (including the publication or distributions of statements) any political campaign on behalf of or in opposition to any candidate, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

TWELFTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to another organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose upon approval of a Justice of the Supreme Court of the State of New York.

THIRTEENTH: In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code of 1986, the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Section 4942 of the Code; and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent Federal tax laws.

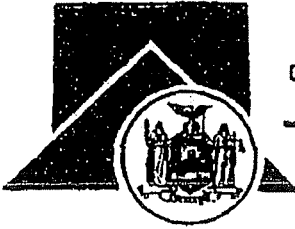
October 1, 2002



Signature

Scott M. Golodner
Name Typed or Printed

Weisman Celler Spett & Modlin, P.C.
445 Park Avenue- 15th Floor
New York, NY 10022
Address



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

PUBLIC HEALTH COUNCIL

April 8, 2003

Mr. Gilbert Preira
Executive Director
Daughters of Jacob NH Company, Inc.
1160 Teller Avenue
Bronx, New York 10456

Re: Certificate of Incorporation of DOJ Dialysis Center Corp.

Dear Mr. Preira:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19th day of July, 2002, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of DOJ Dialysis Center Corp., dated October 1, 2002.

Sincerely,


Karen S. Westervelt
Executive Secretary 

4

F: 030501000365

**CERTIFICATE OF INCORPORATION
OF
DAUGHTERS OF JACOB DIALYSIS CENTER CORP.**

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

lcc

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 01 2003

TAX \$ BY: *Lmb / JLB*
Bronx

Filed by: **Weisman Celler Spett & Modlin, PC**
445 Park Avenue, 15th Floor
New York, NY 10022

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BY-LAWS

OF

DOJ DIALYSIS CENTER CORP.

(a New York not-for-profit corporation)

ARTICLE I

MEMBERS

1. **MEMBERSHIP CERTIFICATES.** The Board of Directors may, but need not, cause to be issued certificates to evidence membership in the corporation. The fact that the corporation is a not-for-profit corporation, and that any such membership certificate or card is non-transferable shall be noted conspicuously on the face or back of any membership certificate which may be issued. Any such certificate shall set forth any such additional statements as may be required by the Not-for-Profit Corporation Law or any other provision of law. Membership certificates, if issued, shall bear the signature or facsimile signature of the officer or officers designated by the Board of Directors and may bear the seal of the corporation or a facsimile thereof.

2. **CAPITAL CERTIFICATES.** If any capital contribution shall be made, each certificate evidencing a capital contribution shall contain the statements prescribed by Section 503 of the Not-for-Profit Corporation Law or of any other provision of law, and shall be signed by the Chairman of the Board, if any, or the Vice-Chairman of the Board, if any, or the President, or a Vice-President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer and may bear the seal of the corporation or a facsimile thereof. The signatures of the officers upon any such certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employees. Except as may otherwise be provided by the Not-for-Profit Corporation Law, any such certificate shall not be transferable.

3. **MEMBERSHIP.** The person or persons signing the Certificate of Incorporation as incorporator or incorporators shall be the first member or members of the corporation unless he or they shall have resigned as such member or members or unless membership shall otherwise be terminated. Thereafter, the qualifications and eligibility for membership and the manner of admission into membership shall be prescribed by resolution of the Board of Directors and/or by

any similarly prescribed rules and regulations which the Board of Directors may promulgate. In like manner, any such resolution and/or rules and regulations shall prescribe, in relation to all members, the amount and manner of imposing and collecting any initiation or other fees, and any dues, assessments, fines, and penalties, the manner of suspension or termination of membership and for reinstatement, if any, and, except as may hereinafter be provided, the rights, liabilities, and other incidents of membership. Any such resolution and/or rules and regulations relating to memberships in the corporation shall be annexed to these By-Laws and shall be deemed to be a component part thereof.

Except as may herein otherwise be provided, membership shall be terminated by the death, resignation, or expulsion of a member or dissolution or liquidation of a corporate member or by the dissolution or liquidation of the corporation; and any right or interest of a member shall terminate upon the happening of any such event or otherwise.

A member shall be liable to the corporation only to the extent of any unpaid portion of any initiation fees, dues, and assessments or for any other indebtedness owed by him or it to the corporation.

Members shall have, upon dissolution or liquidation of the corporation, only such distributive rights relating to any contributions, initiation fees, dues, and assessments paid by them as the Certificate of Incorporation may confer upon them.

4. **RECORD DATE FOR MEMBERS.** For the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining members entitled to receive distributions, or the allotment of any rights, or for the purpose of any other action, the directors may fix, in advance, a date as the record date for any such determination of members. Such record date shall not be more than fifty days and not less than ten days before the date of such meeting or such consent or dissent or other action by the members or the date on which the resolution of directors relating to any distribution or allotment of rights, as the case may be. If no record date is fixed, the record date for the determination of members entitled to vote at a meeting of members shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; and, in such case, the record date for determining members for any purpose other than that specified in the preceding clause shall be at the close of business on the day on which the resolution of the directors relating thereto is adopted. When a determination of members of record entitled to notice of or to vote at any meeting of members has been made as provided in this paragraph, such determination shall apply to any adjournment thereof, unless the directors fix a new record date under this paragraph for the adjourned meeting.

5. **MEANING OF CERTAIN TERMS.** As used herein in respect of the right to notice of a meeting of members or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "membership" or "memberships" or "member" or "members" refers to an outstanding membership or memberships of record and in good standing.

6. **MEMBERSHIP MEETINGS.**

TIME. The annual meeting shall be held on the date fixed, from time to time, by the directors, provided, that the first annual meeting shall be held on a date within thirteen months after the formation of the corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date fixed by the directors except when the Not-for-Profit Corporation Law confers the right to fix the date upon members.

PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of New York, as the directors may, from time to time, fix. Whenever the directors shall fail to fix such place, or, whenever members entitled to call or convene a special meeting shall convene the same, the meeting shall be held at the office of the corporation in the State of New York.

CALL. Annual meetings may be called by the directors or by any officer instructed by the directors to call the meeting. Special meetings may be called in like manner except when the directors are required by the Not-for-Profit Corporation Law to call a meeting, or except when the members are entitled by said Law to demand the call of a meeting.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER OF NOTICE.

Written notice of all meetings shall be given, stating the place, date, and hour of the meeting, and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall (if any other action which could be taken at a special meeting is to be taken at such annual meeting) state the purpose or purposes. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called; and, at any such meeting, only such business may be transacted which is related to the purpose or purposes set forth in the notice. If the directors shall adopt, amend, or repeal a by-law regulating an impending election of directors, the notice of the next meeting for election of directors shall set forth the By-Law so adopted, amended, or repealed, together with a concise statement of the changes made. A copy of the notice of any meeting shall be given to each member at his record address or at such other address which he may have furnished by request in writing to the Secretary of the corporation. If the notice is given personally or by first class mail, it shall be given not less than ten nor more than fifty days before the date of the meeting or, if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States post office department. If a meeting is adjourned to another time or place, and, if any announcement of the adjourned time or place is made at such meeting, it shall not be necessary to give notice of the adjourned meeting unless the directors, after adjournment, fix a new record date for the adjourned meeting. Notice of a meeting and/or of the lapse of any prescribed period of time need not be given to any member who submits a signed waiver of notice and/or of the lapse of any prescribed period of time before or after the meeting. The attendance of a member at a meeting without protesting prior to the conclusion of the meeting the

lack of notice of such meeting shall constitute a waiver of notice by him.

MEMBERS LIST OR RECORD AND CHALLENGE. A list or record of members as of the record date, certified by the Secretary or other officer responsible for its preparation, shall be produced at any meeting of members upon the request therefor of any member who has given written notice to the corporation that such request will be made at least ten days prior to such meeting. If the right to vote at any meeting is challenged, the inspectors of election, if any, or the person presiding thereat, shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list or record to be members entitled to vote thereat may vote at such meeting.

ANNUAL REPORT OF DIRECTORS. The Board of Directors shall present at each annual meeting of members its report, which shall set forth the statements and shall be verified or certified in the manner prescribed by Section 519 of the Not-for-Profit Corporation Law. Such report shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of such annual meeting of members.

CONDUCT OF MEETING. Meetings of the members shall be presided over by one of the following officers in the order of seniority and if present and acting - the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the members. The Secretary of the corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the Chairman of the meeting shall appoint a secretary of the meeting.

PROXY REPRESENTATION. Every member may authorize another person or persons to act for him by proxy in all matters in which a member is entitled to participate, whether by waiving notice of any meeting or the lapse of any prescribed period of time, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided by the Not-for-Profit Corporation Law.

INSPECTORS - APPOINTMENT. The directors, in advance of any meeting, may, but need not, appoint one or more inspectors to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if

any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of membership certificates or cards, if any, or the number of memberships, outstanding and the voting power of each, the membership certificates or cards, if any, or the number of memberships represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots, or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots, or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all members. On request of the person presiding at the meeting or any member, the inspector or inspectors, if any, shall make a report in writing of any challenge, question, or matter determined by him or them and execute a certificate of any fact found by him or them.

QUORUM. Except for a special election of directors pursuant to Section 604 of the Not-for-Profit Corporation Law, and except as herein otherwise provided, the members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of members for the transaction of any business. The members present may adjourn the meeting despite the absence of a quorum.

VOTING. Each membership shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action shall be authorized by a majority of the votes cast except where the Not-for-Profit Corporation Law prescribes a different proportion of votes; provided that the said majority of the affirmative votes cast shall be at least equal to a quorum.

7. **MEMBERSHIP ACTION WITHOUT MEETINGS.** Whenever members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all memberships.

ARTICLE II GOVERNING BOARD

1. **FUNCTIONS AND DEFINITIONS.** The corporation shall be managed by a governing board, which is herein referred to as the "Board of Directors" or "directors" notwithstanding that the members thereof may otherwise bear the titles of trustees, managers, or governors or any other designated title. The word "director" or "directors" likewise herein refers to a member or to members of the governing board notwithstanding the designation of a different official title or titles. The use of the phrase "entire board" herein refers to the total number of directors which the corporation would have if there were no vacancies.

2. **QUALIFICATIONS AND NUMBER.** Each director shall be at least eighteen years of age. A director shall be a member during his directorship, but need not be a citizen of the United States, or a resident of the State of New York. The initial Board of Directors shall consist of three persons. Thereafter the number of directors constituting the entire board shall be at least three. Subject to the foregoing limitation and except for the first Board of Directors, such number may be fixed from time to time by action of the members or of the directors, or, if the number is not so fixed, the number shall be three. The number of directors may be increased or decreased by action of the members or of the directors, provided that any action of the directors to effect such increase or decrease shall require the vote of a majority of the entire Board. No decrease shall shorten the term of any incumbent director.

3. **ELECTION AND TERM.** The first Board of Directors shall consist of those persons named as the initial directors in the Certificate of Incorporation and shall hold office until the first annual meeting of members and until their successors have been elected and qualified. Thereafter, directors who are elected at an annual meeting of members, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of members and until their successors have been elected and qualified. In the interim between annual meetings of members or of special meetings of members called for the election of directors, newly created directorships and any vacancies in the Board of Directors, including vacancies resulting from the removal of directors for cause or without cause, may be filled by the vote of the remaining directors then in office.

4. **MEETINGS.**

TIME. Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

PLACE. Meetings shall be held at such place within or without the State of New York as shall be fixed by the Board.

CALL. No call shall be required for regular or annual meetings for which the time and place have been fixed. Special meetings may be called by the Chairman of the Board, if any, the President, or a Vice-President.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular or annual meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat unless the lapse of such time has been waived. The notice of any meeting need not specify the purpose of the meeting. Notice of any adjournment of a meeting of the Board of Directors to another time or place because a quorum is not present shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors. Any requirement of furnishing a notice shall be waived by any director who signs a waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

QUORUM AND ACTION. Except as hereinafter provided, a majority of the entire Board shall constitute a quorum. Whenever a vacancy or vacancies in the Board shall prevent a quorum from consisting of a majority of the entire Board as aforesaid, a quorum shall consist of at least one-third of the entire Board if the entire Board consists of not more than fifteen directors and shall, if the entire Board exceeds fifteen directors in number, consist of five directors plus one additional director for every ten directors (or fraction thereof) in excess of fifteen. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as otherwise provided by the Not-for-Profit Corporation Law and except as in these By-Laws otherwise provided, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of the Board of Directors or of any such committee, as the case may be, by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time; and participation by such means shall constitute presence in person at a meeting.

CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the President, if present and acting, or any other director chosen by the Board, shall preside.

5. **REMOVAL OF DIRECTORS.** Any or all of the directors may be removed for cause or without cause by the members. One or more of the directors may be removed for cause by the Board of Directors; provided that there is a quorum of not less than a majority present at the meeting at which such action is taken.

6. **COMMITTEES.** Whenever the Board of Directors shall consist of more than three members, the Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may designate from their number three or more directors to constitute an Executive Committee and other standing committees, each of which, to the extent provided in the resolution designating it, shall have the authority of the Board of Directors with the exception of any authority the delegation of which is prohibited by Section 712 of the Not-for-Profit Corporation Law.

7. **ACTION WITHOUT MEETINGS.** Any action required or permitted to be taken by the Board of Directors or by any committee thereof may be taken without a meeting if all members of the Board of Directors or of a committee thereof consent in writing to the adoption of a resolution authorizing the action. In the event of any such action without a meeting, the resolution and the written consents thereto by all of the members of the Board of Directors or of a committee thereof shall be filed with the minutes of the proceedings of the Board of Directors or of a committee thereof as the case may be.

ARTICLE III
OFFICERS

The directors may elect or appoint a Chairman of the Board of Directors, a Vice-Chairman of the Board, a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers as they may determine. The President may but need not be a director. Any two or more offices may be held by the same person except the offices of President and Secretary.

Unless otherwise provided in the resolution of election or appointment, each officer shall hold office until the meeting of the Board of Directors following the next annual meeting of members and until his successor has been elected and qualified.

Officers shall have the powers and duties defined in the resolution appointing them.

The Board of Directors may remove any officer for cause or without cause.

ARTICLE IV
BOOKS AND RECORDS

The corporation shall keep at the office of the corporation within the State of New York correct and complete books and records of account and shall keep minutes of the proceedings of the members, of the Board of Directors, and/or any committee which the directors may appoint, and a list or record containing the names and addresses of all members; provided that the books and records of account may be kept at an office without the State of New York if the Certificate of Incorporation shall so provide. Any of the foregoing books, minutes, or lists or records may be in written form or in any other form capable of being converted into written form within a reasonable time.

ARTICLE V
CORPORATE SEAL

The corporate seal, if any, shall be in such form as the Board of Directors shall prescribe.

ARTICLE VI
FISCAL YEAR

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

EXHIBIT B

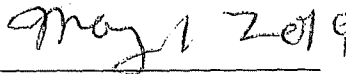
PLAN OF DISSOLUTION
OF
DOJ DIALYSIS CENTER CORP.

The Board of Directors ("Directors") of DOJ Dialysis Center Corp. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. Other than the approval of the Attorney General, no approval of the dissolution of the Corporation by any governmental body or officer is required.
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.



Gerald Gordon, Director & Acting Secretary



(Date)

CERTIFICATE OF DISSOLUTION

OF

DOJ DIALYSIS CENTER CORP.

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

I, Gerald Gordon, Director & Acting Secretary of DOJ Dialysis Center Corp. hereby certify:

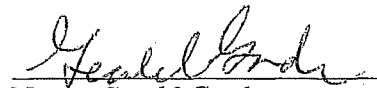
1. The name of this Corporation is DOJ Dialysis Center Corp. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on May 1, 2003.

3. The names, addresses and titles of the Corporation's Officers and Directors are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Henry I. Burr	Director	130 Sunrise Avenue Apt. 304W Palm Beach, FL 33480
Gerald Gordon	Director & Acting Secretary	25 Washington Lane, #733 Wyncote PA 19095

4. At the time of dissolution, the Corporation is a charitable corporation.
5. When the Board of Directors authorized 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.
6. The Corporation elects to dissolve.
7. Dissolution of the Corporation was authorized by a unanimous vote of the Board of Directors, which authorization is annexed hereto.
8. Prior to the delivery of this Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution has been approved by the Attorney General, which approval is annexed hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of
DOJ Dialysis Center Corp., this ~~1st~~ day of May, 2019.



Name: Gerald Gordon

Title: Director & Acting Secretary

**CERTIFICATE OF DISSOLUTION
OF
DOJ DIALYSIS CENTER CORP.**

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

Filed by:

Cynthia Thomas, Esq.,
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

EXHIBIT C

**RESOLUTIONS OF THE BOARD OF DIRECTORS
OF
DOJ DIALYSIS CENTER CORP.**

The undersigned, being all of the members of the Board of Directors of DOJ Dialysis Center Corp., a New York State Not-for-Profit corporation (the "Corporation"), hereby consent to the adoption of the following resolutions without a meeting pursuant to Section 614 of the Not-for-Profit Corporation Law of the State of New York:

WHEREAS, the Corporation has determined that it is in the best interest of the Corporation to dissolve; and

WHEREAS, the Corporation has no assets, liabilities or operations.

NOW THEREFORE BE IT:

RESOLVED, that the Corporation be dissolved and that, in furtherance thereof, the Plan of Dissolution, in the form annexed hereto as Exhibit A, be and such Plan of Dissolution hereby is ratified and approved in all respects;

RESOLVED, that, upon the taking of all actions contemplated by the Plan of Dissolution, the Corporation file the Certificate of Dissolution, in the form annexed hereto as Exhibit B, with the Secretary of State of the State of New York, which Certificate of Dissolution is hereby ratified and approved in all respects;

RESOLVED, that each of the members of the Board of Directors of the Corporation and any of designee of either (each, an "Authorized Representative"), acting individually, is hereby authorized to do such acts, and to execute and deliver any and all agreements, documents, instruments, obligations, certificates and other undertakings, on behalf of the Corporation, as he or she may deem useful or necessary to effectuate the transactions contemplated hereby and to carry out the intent and purposes of these Resolutions; and be it further

RESOLVED, that any and all acts done, and any agreements, documents, instruments, obligations, certificates and other undertakings negotiated, executed and delivered, by an Authorized Representative, in the name and on behalf of the Corporation in connection with the foregoing Resolutions, be, and they hereby are, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation.

RESOLVED, that these Resolutions shall take effect immediately.

This Consent may be executed in two or more counterparts, all of which together shall be deemed to be one and the same instrument. Delivery by facsimile or electronic means of a counterpart signature page hereto shall constitute execution and delivery of such counterpart of this Consent.

IN WITNESS WHEREOF, the undersigned have executed this consent this 1st day of April 2019.

Henry I Burr

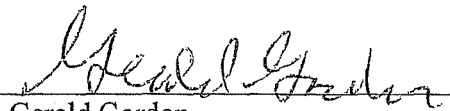

Gerald Gordon

Exhibit A

Plan of Dissolution

Exhibit A
Plan of Dissolution

PLAN OF DISSOLUTION
OF
DOJ DIALYSIS CENTER CORP.

The Board of Directors ("Directors") of DOJ Dialysis Center Corp. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. Other than the approval of the Attorney General, no approval of the dissolution of the Corporation by any governmental body or officer is required.
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Gerald Gordon, Director & Acting Secretary

(Date)

DOJ Dialysis Corp.
Schedule of Cash collected and summary Balance Sheet from 990 filings
Years ended December 31, 2013 through 2018

Balance Sheet

Assets

	2013	2014	2015	2016	2017	2018
Cash	106,851	6,694	6,584			
Total Assets	106,851	6,694	6,584	-	-	-

Liabilities and Net Assets

Accounts Payable and accrued expenses	139,556	139,555	139,555			
Due to management company	35,334					
Due to third parties	138,400	73,254	73,254			
Total liabilities	313,290	212,809	212,809	-	-	-
Net assets	(206,439)	(206,115)	(206,225)			
Total liabilities and net assets	106,851	6,694	6,584	-	-	-

Statement of Activities

Revenues

Recovery of bad debt	430,495					
Interest	-	480				
Total revenues	430,495	480	-	-	-	-

Expenses

Grant to related entity (DOJNH)	240,000					
Accounting	1,059					
Office expenses	6,411					
Interest and bank charges	6,101	156	110			
Bad debt	3,372					
Total expenses	256,943	156	110	-	-	-
Excess of Revenues over expenses	173,552	324	(110)	-	-	-

Facility Id. 6750
Certificate No. 7000270R

State of New York
Department of Health
Office of Health Systems Management

OPERATING CERTIFICATE

Diagnostic and Treatment Center

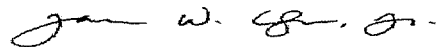
DOJ Dialysis Center Corp
1160 Teller Avenue
Bronx, New York 10456

Effective Date: 01/05/2009
Expiration Date: NONE

Operator: DOJ Dialysis Center Corp
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28
of the Public Health Law for the service(s) specified:

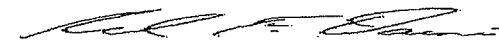
Renal Dialysis - Chronic O/P (12)



Deputy Commissioner
Office of Health Systems Management

20081231

This certificate must be conspicuously displayed on the premises.



Commissioner

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

December 7, 2011

Mr. Gary Lipperman
Administrator
DOJ Nursing and Rehabilitation Center
1160 Teller Avenue
Bronx, New York 10456

Re: Decertification of operator and site closure of
DOJ Dialysis Center
1160 Teller Avenue, Bronx
Operating Certificate: 7000270R
Facility ID: 6750

Dear Mr. Lipperman:

In response to your request of June 17, 2011, staff from the Division of Certification and Surveillance and the New York Metropolitan Area Regional Office reviewed the closure plan for the site listed above.

The closure plan is approved effective upon completion of CON 112256. The operating certificate should be surrendered immediately after that date to the New York Metropolitan Area Regional Office.

If you have any questions concerning this matter please contact Mr. Jeffrey M. Spitz at 212-417-5990.

Thank you.

Sincerely,



Richard M. Cook
Deputy Commissioner
Office of Health Systems Management

cc: Ms. Celeste Johnson
Mr. Jeffrey M. Spitz
Closure File 842

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel

Date: October 13, 2023

Subject: Proposed Dissolution of Wartburg Nursing Home, Inc.

The attached package was prepared by Vincent DiCocco for the Division of legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

TO: Michael Stelluti
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel

DATE: October 13, 2023

SUBJECT: Proposed Dissolution of Wartburg Nursing Home, Inc.

This is to request that the above matter be included on the agendas for the next Establishment Committee and Public Health Council meetings.

The attachments relating to this matter include the following:

1. A memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
2. An electronic letter dated August 4, 2023, from Jamie D. Hogenkamp on behalf of Wartburg Nursing Home, Inc. to the Department;
3. The proposed Verified Petition to the Attorney General from Wartburg Nursing Home, Inc. seeking dissolution;
4. The Wartburg Nursing Home, Inc. Plan of Dissolution;
5. The Certificate of Incorporation of Wartburg Nursing Home, Inc.;
6. The Bylaws of The Wartburg Nursing Home, Inc.; and
7. The resolutions of the Lutheran Care Network, Inc., the sole member of Wartburg Nursing Home, Inc. and the Board of Directors of Wartburg Nursing Home, Inc. approving the plan of dissolution.

Attachments

cc: Jason Corvino

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: October 13, 2023

Subject: Proposed Dissolution of Wartburg Nursing Home, Inc.

Wartburg Nursing Home, Inc. ('WNH') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

WNH, a New York not-for-profit charitable corporation was formed on September 21, 1970, with the stated purpose to forming a Nursing Home Corporation in Kings County, State of New York. Wartburg ceased operating its Nursing Home in 2010 and has no remaining assets. As a result, WNH had voluntarily relinquished its Operating Certificate.

Wartburg's Board of Directors and sole corporate member (The Lutheran Care Network, Inc.) now desire to dissolve the corporation.

Attached is an August 4, 2023, electronic letter from Jamie D. Hogenkamp on behalf of WNH to PHHPC, a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, WNH's Certificate of Incorporation and Bylaws. Additionally, there is WNH's resolution of the Board of Directors and the resolution of the sole corporate member authorizing the dissolution.

There is no legal objection to the proposed dissolution of Wartburg Nursing Home, Inc., and it is in a legally acceptable form.

Attachments

BARCLAY DAMON ^{LLP}

Jamie Dughi Hogenkamp
Counsel

August 4, 2023

VIA ELECTRONIC MAIL

New York State Department of Health
Office for the Aging
2 Empire State Plaza, 5th Floor
Albany, New York 12223

Re: Request for DOH Consent to Voluntarily Dissolve Wartburg Nursing Home, Inc.

To whom it may concern:

Barclay Damon LLP represents Wartburg Nursing Home, Inc. (“Wartburg”) and its sole corporate member, The Lutheran Care Network, Inc. (“TLCN”), each a New York not-for-profit corporation. We write today requesting the New York State Department of Health’s consent to voluntarily dissolve Wartburg. Such consent is required to secure the New York State Office of the Attorney General’s approval to dissolved and must also be included when filing Wartburg’s Certificate of Dissolution with the New York Department of State.

Wartburg ceased operating its Nursing Home in 2010 and has no remaining assets. As a result, we no longer have a copy of Wartburg’s DOH Operating Certificate. Wartburg’s Board of Directors (“Board”) and sole corporate member now desire to dissolve the corporation.

Attached hereto as Exhibit A is a copy of the Plan of Dissolution approved by the Board and TLCN. Corresponding authorizing resolutions are attached at Exhibit B and Exhibit C, respectively, and Wartburg’s final IRS Form 990 is attached for reference at Exhibit D.

We respectfully request that your office review the attached materials and provide consent for the voluntary dissolutions at your earliest convenience. Should you have any questions or concerns, please do not hesitate to contact me using the information below.

Very truly yours,


Jamie Dughi Hogenkamp

JDH:rmm
Enclosure

-----X
In the Matter of the Application of :

Wartburg Nursing Home, Inc. : **VERIFIED PETITION**

For Approval of Certificate of :
Dissolution pursuant to : OAG No. _____
Section 1002 of the Not-for-Profit Corporation Law. :
-----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
Charities Bureau
Transactions Section
28 Liberty Street
New York, New York 10005

Petitioner, Wartburg Nursing Home, Inc. (the "Petitioner"), by Laraine Fellegara, its Chief Executive Office, for its Verified Petition alleges:

1. Petitioner was incorporated pursuant to Section 402 of the New York Not-for-Profit Corporation Law on October 9, 1970. Copies of Petitioner's Certificate of Incorporation, including all amendments thereto, and complete and current By-laws are attached hereto as **Exhibit A**.
2. Petitioner's principal office is located in the County of Kings.
3. The names, addresses and titles of Petitioner's directors and officers are as follows:

Ms. Laraine Fellegara
Board Member & Chief Executive Officer
103 Vernon Drive
Scarsdale, NY 10583

Mr. John Mesloh
Board Chair
46 Whitehall Boulevard
Garden City, NY 11530

Mr. Arthur Upright
Board Vice-Chair
663 New Paltz Road
Highland, NY 12528

Mr. Peter Mazer
Board Member

2437 Fifth Avenue
East Meadow, NY 11554

Mr. John Shane
Board Member
114 Snowberry Lane
New Canaan, CT 06840

Mr. John F. Ruth
Board Member
174 Mariomi Road
New Canaan, CT 06840

Fr. Brian E. McWeeney
Board Member
St. Michael's Roman Catholic Church
424 West 34th Street
New York, NY 10001

Mr. Bill Teator
Board Member
3 Aurora Avenue
Saratoga Springs, NY 12866

Mr. Tom Roemke
Board Member
39 Washington Avenue
Albany, NY 12205

4. The purposes for which Petitioner was organized are set forth in its Certificate of Incorporation at paragraph THIRD thereof and are as follows:

“The purpose for which the corporation is formed are to provide either separately , or in combination, the following: Nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.”
5. Petitioner is a charitable corporation.
6. Petitioner plans to dissolve in accordance with the Plan of Dissolution attached hereto as **Exhibit B** (the “Plan”).
7. Petitioner is dissolving because the nursing home is no longer in operation.
8. The Board of Directors, by Unanimous Written Consent dated July 21, 2023, approved resolutions adopting the Plan and authorizing the filing of a Certificate of Dissolution. The Unanimous Written Consent of Petitioner’s Board of Directors is attached hereto as **Exhibit C**.

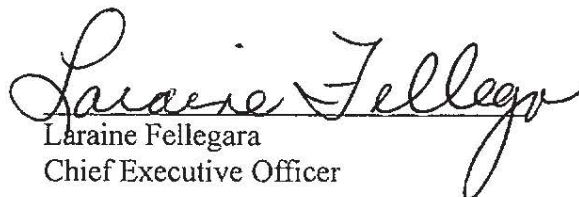
9. Following Board of Director approval of the Plan, the Sole Member by Unanimous Written Consent approved the Plan and the dissolution of Petitioner. The Unanimous Written Consent of the Sole Member is attached hereto as **Exhibit D**.
9. Petitioner has no assets or liabilities.
10. Petitioner has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate registration fee, a copy of which is attached hereto as **Exhibit E**.
11. Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.
12. 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. *See Exhibit F*.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of The Lutheran Care Network Foundation, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREFORE, Petitioner has caused this Petition to be executed this 21st
day of June, 2023, by

July


Laraine Fellegara
Chief Executive Officer

Verification and Certification

STATE OF NEW YORK)

:SS.:

COUNTY OF Westchester

Laraine Fellegara, being duly sworn, deposes and says:

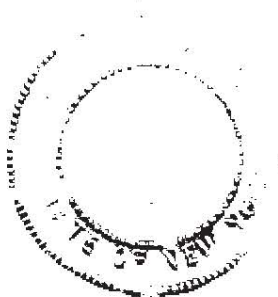
I am the Chief Executive Officer of Wartburg Nursing Home, Inc., the Petitioner named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the Petitioner's sole member.


Signature

Sworn to before me this 21st day of June, 2023.


Notary Public

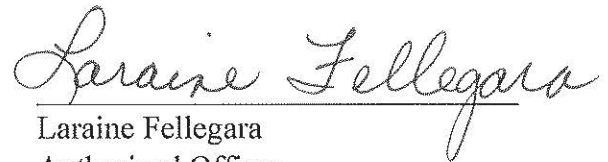
J. DAVID NANNA
No. 01NA5067128
Notary Public, State of New York
Qualified in Westchester County
My Commission Expires 10/15/2026



**PLAN OF DISSOLUTION
OF
WARTBURG NURSING HOME, INC.**

The Board of Directors of Warburg Nursing Home, Inc. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - a. New York State Department of Health
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.



Laraine Fellegara
Authorized Officer

*No distribution
to members
and exclusively
for WNH purposes
or similar purposes*

CERTIFICATE OF INCORPORATION

OF

WARTBURG NURSING HOME, INC.

Under Section 402 of the Not-
For-Profit Corporation Law and
the Public Health Law

We, the undersigned for the purpose of forming a
Nursing Home Corporation pursuant to the Not-For-Profit
Corporation Law and the Public Health Law of the State of
New York hereby certify:

I

The name of the proposed Corporation is WARTBURG
NURSING HOME, INC. (Hereinafter referred to as the "Cor-
poration").

II

The Corporation is not formed for pecuniary profit
or financial gain.

All income and earnings of the Corporation shall be
used exclusively for its corporate purposes.

The Corporation is a corporation as defined in sub-
paragraph (A) (5) of Section 102 (Definitions) of the Not-
For-Profit Corporation Law.

III

The purposes for which the Corporation is formed are
to provide either separately, or in combination, the
following:

Nursing home accommodations for sick, invalid,
firm, disabled or convalescent persons of low income,
this end to plan, construct, erect, build, acquire, alter

reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law shall be "Type D".

IV

The territory in which the operations of the Corporation will be principally conducted is the State of New York.

V

The principal office of the Corporation is to be located in the Borough of Brooklyn, County of Kings, City and State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII

The names and residences of the Directors of the Corporation until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Carl L. Maurer	11 Woodridge Lane, Seacliff, N. Y.
Howard Hallett	11 Sycamore Drive, Flower Hill, Roslyn, N. Y.
Robert H. Just	46 Lincoln Avenue, Tuckahoe, N. Y.
John H. Krasman	465 74th St., Brooklyn, N.Y.
Henry Steinbrecher	1042 Hart St., Brooklyn, N.Y.
Albert M. Nelson	176 Margaret Drive, East Meadow, N. Y.
Fred N. Sollog	781 Cornell Rd., Franklin Square, N.Y.

VIII

The duration of the Corporation shall be perpetual.

IX

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

X

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

The Corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Article II hereof, thereby to lessen the burdens of government

and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization

or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

XII

All of the incorporators of this corporation are natural persons over the age of 19 years.

XIII

The following consents and approvals are annexed hereto:

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.
2. The approval of a Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.
3. The approval of the Public Health Council.

XIV

The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

2598 Fulton Street, Brooklyn, New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 21st day of September, 1970.

Fred N. Sollog

FRED N. SOLLOG
781 Cornell Road, Franklin Square, N.Y.

Robert H. Just

ROBERT H. JUST
46 Lincoln Avenue, Tuckahoe, N. Y.

Albert M. Nelson

ALBERT M. NELSON
176 Margaret Drive, East Meadow, N. Y.

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

On this 21st day of September, 1970, before me personally came FRED N. SOLLOG, ROBERT H. JUST, and ALBERT M. NELSON, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of WARTEBURG NURSING HOME, INC., and they duly acknowledged to me that they executed the same.

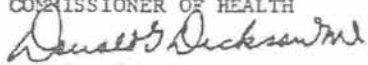
Patricia McCabe

PATRICIA McCABE
Notary Public, State of New York
No. 41-2509240
Qualified in Queens County
Commission Expires March 30, 1971

CONSENT TO INCORPORATION
BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 1st day of October, 1970, pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of WARTBURG NURSING HOME, INC., with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D.
COMMISSIONER OF HEALTH

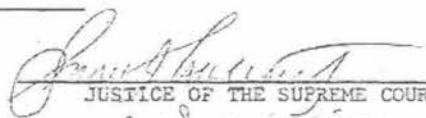

BY Donald G. Dickson, M.D.
DEPUTY COMMISSIONER

The undersigned, a Justice of the Supreme Court of the State of New York, County of Kings, Second Judicial District, wherein is located the principal office of WARTBURG NURSING HOME, INC., hereby approves the within Certificate of Incorporation of WARTBURG NURSING HOME, INC., and the filing thereof.

DATED: Oct 7, 1970

Oct 26, 1970

HON. SIMON I. LIEBOWITZ


JUSTICE OF THE SUPREME COURT
2nd Judicial District

BY-LAWS OF
WARTBURG NURSING HOME

*Assets on dissolution
to TWT/Watburg
95 adoption
Identical to W.L.H.A*

ARTICLE I

NAME, PURPOSES, OFFICES AND CORPORATE SEAL

Section 1.01. Name. The name of the Corporation shall be WARTBURG NURSING HOME (hereinafter "Corporation").

Section 1.02. Purposes. The purposes of this Corporation shall be set forth in its Certificate of Incorporation.

*> Not
enforced*

Section 1.03. Offices. The location of the principal office of the Corporation shall be in the County of Kings and State of New York, or at such other location within the State of New York as the Board of Directors may designate.

ARTICLE II

MEMBERSHIP

Section 2.01. Members. The Corporation shall be a membership corporation. The sole member shall be Wartburg Lutheran Services, Inc., a New York not-for-profit corporation, as duly constituted from time to time.

Section 2.02. Annual Meeting. The annual meeting of the Membership of the Corporation for the election of Directors shall be held at such time, date and place as the Board of Directors shall fix with the advice and consent of the Membership.

Section 2.03. Special Meetings. A special meeting of the Membership may be called by the Board of Directors or by the Membership at any time at such times and places and pursuant to notice as shall be fixed for the meeting.

Section 2.04. Action by Unanimous Written Consent. Any action required or permitted to be taken by the Membership may be taken without a meeting, if the Membership consents in writing to such action. Such consent shall have the same force and effect as the unanimous vote of the Membership. Any certificate or other document filed under any provision of law which relates to actions so taken shall state that the action was taken by the unanimous written consent of the membership without a meeting, and that these By-Laws authorized the membership to so act. Such statement shall be prima facie evidence of such authority.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01. Powers and Authority. The property, business and affairs of the Corporation shall be managed and controlled by the Board of Directors. The Board of Directors shall have, in addition to the powers and authority expressly conferred upon it by these By-Laws, the right, power and authority to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation as a corporation organized under the New York Not-For-Profit Corporation Law but subject, nevertheless, to the statutes of the State of New York, and to the provisions of the Certificate of Incorporation and the By-Laws of the Corporation.

Section 3.02. Number. The Board of Directors shall consist of no less than five (5) directors. The number of directors shall be set by majority vote of the Membership at any annual or special meeting but no decrease shall shorten the term of an incumbent director.

Section 3.03. Election. The Board of Directors shall be elected at the annual meeting of the Membership and until their successors are elected and qualified.

Section 3.04. Vacancies. Any vacancy occurring among the Directors, including any vacancy to be filled by reason of an increase in the number of Directors may be filled by vote of the Membership of the Corporation, unless otherwise required by law, the Certificate of Incorporation, or these By-Laws. A Director elected to fill a vacancy shall serve for the unexpired term of his predecessor in office, and a Director elected to fill a newly created directorship shall serve until the next succeeding annual meeting of the Membership and until his successor shall have been elected and qualified.

Section 3.05. Removal. Any Director may at any time be removed, with or without cause, by vote of the Membership.

Section 3.06. Resignation. A Director may resign by providing written notice to the Chairman. Such resignation shall be effective upon receipt, or upon any subsequent time set forth in the notice of resignation.

Section 3.07. Annual Meetings. The Annual Meeting of the Board of Directors for the election of officers and for the transaction of such other business, as may properly come before such meeting, shall be held within sixty-days (60) after the Annual Meeting of the Members.

Section 3.08. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be fixed by the Board of Directors from time to time. Meetings shall be held at the offices of the Corporation or at such other place as may be designated by the Chairman.

Section 3.09. Special Meetings. Special meetings of the Directors may be called by the Chairman or by any three (3) Directors on three (3) days written notice to each Director either personally, by mail or by telegraph.

Section 3.10. Quorum and Voting. At any duly called meeting of the Board of Directors, a majority of the Directors shall constitute a quorum. Any corporate action to be taken by vote shall be authorized by a majority of Directors present and voting at a meeting at which a quorum is present unless the law, the Certificate or Incorporation, or these By-Laws require a different number. The vote of the Membership shall be required for the following actions: (i) the amendment of these By-Laws, (ii) incurring debt in excess of \$100,000, (iii) initiation of any activities requiring a certificate of need, and (iv) establishing a subsidiary or otherwise affiliating with any other entity.

Section 3.11. Action by Unanimous Written Consent. Any action required or permitted to be taken by the Directors may be taken without a meeting, if all the Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state the action was taken by the unanimous written consent of the Directors without a meeting and that these By-Laws authorized the Directors to so act. Such statement shall be prima facie evidence of such authority.

Section 3.12. Participation by Telephonic Conference. Any one or more of the Directors may participate in any meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

Section 3.13. Compensation and Fiduciary Obligations.

(a) Compensation. No Director shall receive any compensation for any services performed, but such Director may be reimbursed for out-of-pocket expenses necessarily incurred in connection with his duties as a Director.

(b) Fiduciary Standards. Directors shall discharge their duties in good faith and with that degree of diligence, care and skill, which ordinarily prudent persons would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon the financial statements of the Corporation represented to them to be correct by the President or the Treasurer of the Corporation, or stated in a written report by an independent or public or certified public accountant or firm of such accountants, fairly to reflect the financial condition of the Corporation.

(c) Liability and Indemnification. The liability of the Directors, whether joint or several, shall be as set forth in Section 719 of the New York Not-For-Profit Corporation Law (The "N-PCL") and shall be subject to indemnification by the Corporation under the conditions set forth in Article IX of these By-Laws.

Section 3.14. President of Wartburg Lutheran Services, Inc. The President of Wartburg Lutheran Services, Inc. shall have the right to attend all meetings of the Board of Directors of the Corporation.

ARTICLE IV

OFFICERS

Section 4.01. Election. The Directors shall elect a Chairman, Vice Chairman, a Secretary and a Treasurer at the annual meeting of the Directors from among the Directors. The Directors may also elect one or more Vice Presidents who need not be Directors, or provide for the appointment of such other officers and agents and the hiring of such employees as they may deem necessary, and may prescribe their terms of office and duties.

Section 4.02. Terms of Office, Vacancies and Removal of Officers. The terms of office of the Officers of the Corporation shall be one (1) year or until their successors are elected and qualified. Any Officer may be removed with or without cause by the Membership. The removal of an Officer without cause shall be without prejudice to such Officer's contract rights, if any; provided, however, that election or appointment of an Officer shall not of itself create contract rights. The Membership may fill the unexpired term of any vacancy, which occurs in any office of the Corporation.

Section 4.03. Chairman. The Chairman shall call, preside at and conduct all meetings of the Board of Directors. He shall prepare the order of business for all meetings with due regard to expediting the business of the meeting and including, therein, any matters which may be ordered by the Board of Directors. The Chairman shall have the authority to appoint Special Committees not otherwise provided for by these By-Laws. He shall be a member of the Executive Committee, shall serve as chairman of that Committee and shall be an ex-officio member, without vote, of all other Standing and Special Committees of the Board.

Section 4.04. The President. The President shall be the chief executive officer of the Corporation. The President shall be elected by the Membership. The President shall have the right to attend all Board meetings and all meetings of all committees of the Board of Directors. In addition, the President shall perform such other duties as the Board and the Membership shall require.

Section 4.05. The Vice Presidents. The Vice President, if any, or if there be more than one (1), the Vice Presidents, shall perform such duties as may be requested by the President. In the event of the President's death, resignation, removal, incapacity, or refusal to act, the Vice President, or if there be more than one (1), the First vice President, shall succeed him and shall serve for the remainder of the term of his immediate predecessor, until and unless the members fill such vacancy pursuant to Section 4.01 of these By-Laws.

Section 4.06. Secretary. The Secretary shall keep the minute books of meetings of the Board of Directors; shall give and serve all required notices of meetings; shall have custody of the records of the Corporation; shall have custody of the seal of the Corporation and affix it to such instruments or documents as may be authorized by the Board of Directors; and shall keep, and shall make the records of the Corporation available for inspection during business hours at the principal office of the Corporation by any Director or the Membership; and shall perform all other duties incident to the office of Secretary.

Section 4.07. Treasurer. The Treasurer shall report the financial condition of the Corporation to the Board.

Section 4.08. Advisory Board.

} Regional Group

(a) Membership.

The Advisory Board shall be a special committee of the Board of Directors and shall include representatives of the Corporation and representatives of such other Wartburg Lutheran Services, Inc. ("WLS") affiliates ("Representatives") located in the Region in which the Corporation is located ("Region"). The Chairmen of the Boards of Directors of the WLS affiliates located in the Region appoint the Chairman of the Advisory Board. The Chairman of the Advisory Board shall, upon the advice and concurrence of the Chairmen of the Boards of the WLS affiliates located in the Region, appoint Representatives to the Advisory Boards.

(b) Functions.

(i) The Advisory Board shall concern itself with identifying community needs and issues, including the advisability of new projects, and the ways in which the Corporation may be responsive to those needs.

(ii) The Advisory Board shall view operational issues and provide input on management and operations at regular Board meetings.

(iii) The Advisory Board shall act as the sponsoring group for local fund raising events.

(iv) The Advisory Board shall meet regularly to review financial and operational performance of the combined facilities and make recommendations.

(v) The Advisory Board shall assist in the development of strategic planning for the regional affiliates, including identification of opportunities for regional development of new programs.

(vi) The Advisory Board shall provide information to the Board of Directors with respect to changes in the community, which may affect the Corporation's mission or that of its affiliates.

(vii) The Advisory Board shall report to the Boards of Directors of the WLS affiliates located in the Region.

(viii) The Chairman of the Board of WLS shall be charged with monitoring the Advisory Board's discharge of its responsibilities.

(c) Meetings.

The Advisory Board shall meet a minimum of three (3) times per year.

ARTICLE V

ADMINISTRATIVE POSITIONS

The President may from time to time designate new or additional administrative titles, including but not limited to titles such as Vice President for Operations and Vice President for Finance, for administrative positions of the Corporation. Administrators of the Corporation who receive administrative titles will continue to carry out the duties of their respective positions, and despite their administrative titles, shall not be officers of the Corporation.

ARTICLE VI

MEDICAL STAFF

Section 6.01. Organization of Medical Staff.

(a) The Medical Staff of the Corporation shall consist of those physicians, dentists and any other authorized professional personnel who are appointed thereto by the Board of Directors of the Corporation. The Medical Staff shall be organized under the Medical Staff By-Laws approved by the Board of Directors.

(b) All applications for appointment to the Medical Staff shall be in writing and addressed to the President. They shall contain full information concerning the applicant's education, licensure, practice, previous hospital experience, and any history with regard to licensure and privileges at any health care institution.

(c) All appointments to the Medical Staff shall be for one (1) year, renewable at the discretion of the Board of Directors.

Section 6.02. Responsibility for Residents.

(a) The care and treatment of residents in all departments and divisions of the Corporation shall be the sole responsibility of the Medical Staff, nurses and such other persons employed or engaged by the Corporation to render care and treatment.

(b) No member of the Medical Staff or other person shall treat any resident in the Corporation unless the By-Laws, Rules and Regulations of the Medical Staff so authorize.

ARTICLE VII

COMMITTEES

Section 7.01. Committees.

The Board, by resolution adopted by a majority of the entire Board, may designate from among its members and Executive Committee and other committees, each consisting of three (3) or more Directors, as are necessary to fulfill its obligations under Section 3.01 above. Each such committee and its members shall serve at the pleasure of the Board.

Section 7.02. Executive Committee.

(a) The Executive Committee shall consist of the Board Chairman, the Vice Chairman, President, Secretary and Treasurer.

(b) Except as otherwise provided in a resolution of the Board, the Executive Committee shall possess the full authority of the Board, except that neither the Executive Committee nor any other committee shall have authority as to the following matters:

- (i) the submission to Membership of any action that by law or these By-Laws requires the Membership's approval;
- (ii) the amendment or repeal of the By-Laws, or the adoption of new By-Laws; and
- (iii) the amendment or repeal of any resolution of the Board, which by its terms shall not be so amendable or repealable.

Section 7.03. Other Committees. All other committees shall have such authority as shall be provided in the resolution creating such committee.

Section 7.04. Minutes. Each committee shall keep minutes of its proceedings.

ARTICLE VIII

PROPERTY AND INVESTMENTS

Section 8.01. Disposition of Property Received. All property, whether real, personal or mixed, and any undivided interest or interests therein received by the Corporation by gift, grant, purchase, lease, bequest, devise or otherwise, either absolutely or jointly with any other person or persons or corporation, shall be held by the Corporation or disposed of by it in such manner, not consistent with the purpose of this Corporation, as the Board of Directors shall determine.

Section 8.02. Investments. Unless otherwise specified by the terms of the instrument under which the funds are received, the funds of the Corporation may be invested from time to time in such manner as the Board of Directors, or such committee as the Board may designate for the purpose, may deem advantageous, whether or not the investments are of the character which would be required by law for similar funds held by trustees.

Section 8.03. Execution of Instruments. The Board of Directors, except as otherwise provided in these By-Laws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it pecuniarily liable for any purposes or in any amount.

Section 8.04. Checks and Notes. All checks, drafts, promissory notes, orders for the payment of money, and other evidences of indebtedness of the Corporation shall be issued in the name of the Corporation and in such manner and shall from time to time be determined by resolution of the Board of Directors.

Section 8.05. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select or as may be required under escrow agreements.

ARTICLE IX

RECORDS AND REPORTS

Section 9.01. Minutes of the Meetings. The Corporation shall keep at its principal office, or at such other place as the Board of Directors may order, a Corporate Record Book of minutes of all meetings of Directors, with the time and place convened, whether regular or special, and, if special, how authorized, the notice given, the names of those present thereat, and the proceedings thereat.

Section 9.02. Records of Account. The Corporation shall keep and maintain adequate and correct accounts of its properties and business transactions, including accounts of its assets, liabilities, equities, receipts, disbursements, gains and losses.

Section 9.03. Inspection of Records. The records of account shall be at reasonable times be open for inspection by any Director or the Membership. Every Director and the Membership shall have the absolute right at any reasonable business time to inspect all books, records, documents of every kind and all physical properties of the Corporation. Such inspection may be made in person or by agent or attorney and the right of inspection includes the right to make extracts.

Section 9.04. Annual Report and Financial Statement. The Board of Directors shall require the preparation of a written annual report including a financial statement, for presentation at the annual meetings of the Board of Directors and of the Membership. Such report shall summarize the Corporation's activities for the preceding year, and activities projected for the forthcoming year. The financial statement shall include a balance sheet, as of the close of business of the Corporation's fiscal year, and a summary of receipts and disbursements. This financial statement shall be prepared in such manner and form as is sanctioned by generally accepted accounting principles, and shall be attested by a certified public accountant.

ARTICLE X

INTERESTED DIRECTORS

Section 10.01. Contracts or Transactions. No contract or other transaction between the Corporation and one (1) or more of its Directors or Officers, or between the Corporation and any other corporation, firm, association or other entity in which one (1) or more of its Directors or Officers are directors or officers, or have a substantial financial interest, shall be either void or

voidable for this reason alone or by reason alone that such Director or Directors or Officer or Officers are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose, if:

(a) the material facts as to such Director's or Officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith, or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested Director or Officer, or, if the votes of the disinterested Directors are insufficient to constitute an act of the Board, by unanimous vote of the disinterested Directors; or

(b) the material facts as to such Director's or Officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith, or known to the Membership of the Corporation entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such Membership.

Section 10.02. When Avoidable. If there was no such bona fide disclosure to, or knowledge of, the Board of Directors, committee thereof, or the Membership which authorized such contract or transaction, as set forth in Section 10.01, or if the vote of such interested Director or Officer was necessary for the authorization of such contract or transaction at a meeting of the Board or committee at which it was authorized, the Corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the Corporation at the time it was authorized by the Board, a committee thereof, or the Membership.

Section 10.03. Quorum. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee, which authorizes such contract or transaction.

ARTICLE XI

INDEMNIFICATION

Section 11.01. Applicability and Scope.

(a) Consistent with the restrictions contained in the New York Not-For-Profit Corporation Law, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all reasonable expense that may be incurred by him in connection with or resulting from any action, claims, suit or proceeding, civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time of such liability or expense being incurred, provided:

- (1) such Director or Officer acted in good faith for a purpose which he reasonably believed to be in the best interest of the Corporation, and with

that degree of diligence, care and skill which reasonably prudent persons would exercise under similar circumstances in like positions; and

- (2) such Director or Officer is not adjudged liable for negligence or misconduct in the performance of his duty in such action, suit or proceeding; and
- (3) in connection with any criminal action or proceeding, he had not reasonable cause to believe that his conduct was unlawful.

(b) As set forth in this Article, the terms "liability" and "expense" shall include, but shall not be limited to, counsel fees, proper expenses and disbursements, and amounts of judgments, fines or penalties and sums paid in settlement by such Director or Officer of the Corporation.

(c) In the event that a question arises as to whether or not such Director or Officer has met the standards of conduct set forth in this Article, such question shall be conclusively determined by either: (i) the Board of Directors acting by a quorum consisting of Directors who are not involved in such claim, suit or proceeding; or (ii) the written opinion of reputable disinterested legal counsel selected by the Corporation.

(d) If any word, clause or provision of this Article shall for any reason be determined to be invalid, the remaining provisions hereof shall not otherwise be affected thereby, but shall remain in full force and effect.

Section 11.02. Insurance.

- (a) The Corporation shall have the power to purchase and maintain insurance:
- (1) to indemnify the Corporation for any obligation, which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article, and
 - (2) to indemnify Directors and Officers in instances in, which they may be indemnified by the Corporation under the provisions of this Article.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

- (1) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts or active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled, or
- (2) in relation to any risk, the insurance of which is prohibited under the Not-For-Profit Corporation Law or the Insurance Law of the State of New York.

Section 11.03. Right not Exclusive. The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article.

ARTICLE XII

FISCAL YEAR; CORPORATE SEAL

Section 12.01. Fiscal Year. The fiscal year of the Corporation shall begin January 1, and end December 31 of each calendar year.

Section 12.02. Corporate Seal. The Board of Directors shall adopt a corporate seal, which shall be in the form of a circle and bear the full name of the Corporation and the year of its incorporation.

ARTICLE XIII

WAIVER OF NOTICE

The giving of any notice required to be given under these By-Laws and the laws of the State of New York may be waived in writing by any person or persons entitled to said notice, whether before or after the time or event referred to in such notice, which waiver shall be deemed, equivalent to such notice. Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

ARTICLE XIV

DISSOLUTION

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation to the sole member, Wartburg Lutheran Services, Inc., provided that at the time of such dissolution, such corporation is an organization organized and operated exclusively for charitable purpose and which qualifies as an exempt organization under section 501(c) (3) of the Internal Revenue Code of 1954, as amended, and its regulations.

ARTICLE XV

AMENDMENT

The By-Laws may be amended only by an affirmative vote of the member.

As amended June 15, 1995.

POLICY STATEMENT OF
WARTBURG LUTHERAN SERVICES AND ITS AFFILIATES

Wartburg Lutheran Services, Inc. and its affiliates acknowledge their participation in a vital and important health care system, designed to provide for the physical and spiritual needs of the residents and other persons served by the entities. In order to promote the efficient functioning of the system, Wartburg Lutheran Services, Inc. and each of the undersigned affiliates, recognize that Wartburg Lutheran Services, Inc., as sole member of each of the affiliates, will have the responsibility and authority with respect to the following:

- (i) Developing an overall mission for the system;
- (ii) Developing a strategic plan for the system, which will include deciding whether system affiliates should initiate or discontinue major services;
- (iii) Developing a capital formation and debt strategy for the system;
- (iv) Directing and coordinating the flow of funds between system affiliates;
- (v) Allocating human, physical and financial resources between affiliates to maximize achievement of system objectives;
- (vi) Facilitating communication between affiliates;
- (vii) Representing the system to the public.

be and is hereby adopted.

**WRITTEN CONSENT
OF THE SOLE MEMBER
OF
WARTBURG NURSING HOME, INC.**

THE UNDERSIGNED, being the sole member (the "Member") of Wartburg Nursing Home, Inc. (the "Corporation"), hereby take the following actions and consent to the adoption of the following resolutions without a meeting pursuant to Section 614(a) of the New York not-for-profit corporation law (the "NPLC").

WHEREAS, the Corporation was formed to provide nursing home accommodations for the sick, invalid, infirm, and disabled or convalescent persons of low income; and

WHEREAS, the Corporation is inactive and has no plans to resume operations; and

WHEREAS, it is in the best interests of the Corporation and the Member to dissolve the Corporation and wind up its operations;

WHEREAS, the Board of Directors of the Corporation (the "Board") has approved a Plan of Dissolution (the "Plan") to effectuate the foregoing;

WHEREAS, the Board has presented the Plan to the Member and has recommended that the Member approve the Plan;

NOW THEREFORE, it is hereby

RESOLVED: That the Plan be, and hereby is, approved substantially in the form presented to the Member; and be it further

RESOLVED: That the Chief Executive Officer or the Chairperson of the Board, or such officer as either shall designate (each an "Authorized Officer") be, and hereby are, authorized and directed to take any and all actions, and to execute and deliver any and all documents deemed by such Chief Executive Officer or Chairperson to be necessary, appropriate or helpful to effectuate the foregoing Resolution; and be it further

RESOLVED: That any and all actions taken by an Authorized Officer to effectuate or evidence the purpose and intent of the Plan of Dissolution be, and hereby are, approved ratified, and confirmed as a valid act of the Corporation.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Member has caused this Written Consent to be executed on the date reflected below.

MEMBER:

**THE LUTHERAN CARE NETWORK, INC.
(F/K/A WARTBURG LUTHERAN SERVICES, INC.)**

By: Laraine Fellegara
Laraine Fellegara, *President & CEO*

Date: 6/12/2023

*[Signature Page to Written Consent of
the Sole Member of Wartburg Nursing Home, Inc.]*

**UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
OF
WARTBURG NURSING HOME, INC.**

July 21, 2023

THE UNDERSIGNED, being all of the members of the Board of Directors (the “Board”) of Wartburg Nursing Home, Inc. (the “Corporation”), hereby take the following actions and consent to the adoption of the following resolutions without a meeting pursuant to Section 708(b) of the New York not-for-profit corporation law (the “NPCL”).

WHEREAS, the Corporation was formed to provide nursing home accommodations for the sick, invalid, infirm, and disabled or convalescent persons of low income; and

WHEREAS, the Corporation is inactive and has no plans to resume operations; and

WHEREAS, it is in the best interests of the Corporation to dissolve the Corporation and wind up its operations;

WHEREAS, counsel to the Corporation has presented to the Board a proposed Plan of Dissolution to effectuate the foregoing;

NOW THEREFORE, it is hereby

RESOLVED: That the Plan of Dissolution of the Corporation, be and hereby is, approved substantially in the form presented to the Board; and be it further

RESOLVED: That the Chief Executive Officer or the Chairperson of the Board, or such officer as either shall designate (each an “Authorized Officer”) be, and hereby are, authorized and directed to take any and all actions, and to execute and deliver any and all documents deemed by such Chief Executive Officer or Chairperson to be necessary, appropriate or helpful to effectuate the foregoing Resolution; and be it further

RESOLVED: That any and all actions taken by an Authorized Officer to effectuate or evidence the purpose and intent of the Plan of Dissolution be, and hereby are, approved ratified, and confirmed as a valid act of the Corporation.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

This Unanimous Written Consent may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument, notwithstanding that each of the parties are not a signatory to the original or the same counterpart.

BOARD:



JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAIN FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

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ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAIN FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

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BOARD:

JOHN MESLOH, CHAIR



JOHN SHANE

FR. BRIAN E. MCWEENEY

BILL TEATOR



LARAINÉ FELLEGGARA, CEO

PETER MAZER

JOHN F. RUTH

ARTHUR UPRIGHT, VICE CHAIR

TOM ROEMKE

*[Signature Page to Unanimous Written Consent of
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BOARD:

JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

John F. Ruth
JOHN F. RUTH

FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE

Laraine Fellegara
LARAINÉ FELLEGERA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

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BOARD:

JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH



FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAIN FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of the Board
of The Lutheran Care Network Foundation, Inc.]*

This Unanimous Written Consent may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument, notwithstanding that each of the parties are not a signatory to the original or the same counterpart.

BOARD:

JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY



ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAINÉ FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

This Unanimous Written Consent may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument, notwithstanding that each of the parties are not a signatory to the original or the same counterpart.

BOARD:

JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR



BILL TEATOR

TOM ROEMKE



LARAIN FELLEGGARA, CEO

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the Board of Wartburg Nursing Home, Inc.]*

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*[Signature Page to Unanimous Written Consent of the Board
of The Lutheran Care Network Foundation, Inc.]*



CERTIFICATE OF DISSOLUTION OF

Wartburg Nursing Home, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Wartburg Nursing Home, Inc.

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

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

October 9, 1970

THIRD: The name and address of each officer and director of the corporation is:

See Schedule A attached.

FOURTH: The corporation is a: *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x Laraine Fellegara
(Signature)

Laraine Fellegara

(Print or Type Name of Signer)

Chief Executive Officer

(Capacity of Signer)

SCHEDULE A

Ms. Laraine Fellegara
Board Member & Chief Executive Officer
103 Vernon Drive
Scarsdale, NY 10583

Mr. John Mesloh
Board Chair
46 Whitehall Boulevard
Garden City, NY 11530

Mr. Arthur Upright
Board Vice-Chair
663 New Paltz Road
Highland, NY 12528

Mr. Peter Mazer
Board Member
2437 Fifth Avenue
East Meadow, NY 11554

Mr. John Shane
Board Member
114 Snowberry Lane
New Canaan, CT 06840

Mr. John F. Ruth
Board Member
174 Mariomi Road
New Canaan, CT 06840

Fr. Brian E. McWeeney
Board Member
St. Michael's Roman Catholic Church
424 West 34th Street
New York, NY 10001

Mr. Bill Teator
Board Member
3 Aurora Avenue
Saratoga Springs, NY 12866

Mr. Tom Roemke
Board Member
39 Washington Avenue
Albany, NY 12205

CERTIFICATE OF DISSOLUTION
OF

Wartburg Nursing Home, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Jamie Dughi Hogenkamp, Esq.

Company, if applicable: Barclay Damon LLP

Address: 80 State Street, 6th Floor

City, State and Zip Code: Albany, NY 12207

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only