

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

ANNUAL MEETING

AGENDA

February 8, 2024

*Immediately following the Committee on Codes, Regulations, and Legislation Meeting
(Codes scheduled to begin at 9:30 a.m.)*

90 Church Street, 4th Floor CR 4 A/B, New York, New York 10007

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. ELECTION OF OFFICERS

A. Election of Vice Chairperson

B. Announce Committee Chairpersons and Vice Chairpersons

- Committee on Codes, Regulations and Legislation
- Committee on Establishment and Project Review
- Committee on Health Planning
- Committee on Public Health
- Ad Hoc Committee to Lead the State Health Improvement Plan

III. 2025 PHHPC MEETING DATES

2025 PHHPC Meeting Dates

IV. APPROVAL OF MINUTES

November 16, 2023 PHHPC Meeting Minutes

V. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

James V. McDonald, MD, MPH, Commissioner of Health

B. Report of the Office of Health Insurance Programs

Amir Bassiri, Deputy Superintendent and Medicaid Director, Office of Health Insurance Programs

C. Report of the Office of Public Health

Ursula Bauer, PhD, MPH, Deputy Commissioner, Office of Public Health

D. Report of the Office of Primary Care and Health Systems Management

Douglas G. Fish, MD, Acting Deputy Commissioner, Office of Primary Care and Health Systems Management

E. Report of the Office of Aging and Long-Term Care

Adam Herbst, Deputy Commissioner, Office of Aging and Long Term Care

F. Report of the Office of Health Equity and Human Rights

Tina Kim, Deputy Director, Office of Health Equity and Human Rights

VI. PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee

Jo Ivey Boufford, MD, Chair of Public Health Committee

VII. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Emergency Adoption

23-07 Amendment of Section 405.45 of Title 10 NYCRR
(Trauma Centers – Resources for Optimal Care of the Injured Patient)

For Adoption

23-07 Amendment of Section 405.45 of Title 10 NYCRR
(Trauma Centers – Resources for Optimal Care of the Injured Patient)

21-21 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care)

20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)

For Information

24-01 Amendment of Section 405.19 of Title 10 NYCRR (General Hospital Emergency Services Behavioral Health)

23-21 Amendment of Part 300 of Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY))

23-08 Amendment of Sections 405.4 & 405.6 of Title 10 NYCRR (General Hospital Medical Staff Recertification)

VIII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services- Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231332 C	NYU Langone Hospital-Long Island (Nassau County) Dr. Kalkut – Recusal Dr. Lim - Interest	Contingent Approval
2.	231348 C	Long Island Community Hospital at NYU Langone Health (Suffolk County) Dr. Kalkut – Recusal	Contingent Approval

Diagnostic and Treatment Centers – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231299 C	Weill Cornell Imaging at New York Presbyterian (New York County) Dr. Lim – Interest	Contingent Approval
2.	232063 C	ODA Primary Health Care Network, Inc (Kings County) Dr. Kalkut – Interest	Contingent Approval

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

CON Applications

Acute Care Services- Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231308 C	New York-Presbyterian Westchester (Westchester County)	Contingent Approval
2.	231311 C	Samaritan Medical Center (Jefferson County)	Contingent Approval

Cardiac Services Construction – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231326 C	Auburn Community Hospital (Cayuga County)	Contingent Approval
2.	231351 C	St. Charles Hospital (Suffolk County)	Contingent Approval

Diagnostic and Treatment Centers – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231261 C	Weill Cornell Imaging at New York Presbyterian (Kings County)	Contingent Approval
2.	232124 C	Community Health Center of Richmond, Inc. (Richmond County)	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	222044 B	Sorin Ambulatory, LLC d/b/a Sorin Ambulatory Surgery Center (New York County) Dr. Kalkut - Interest	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231114 B	Prime MD Center, LLC (Nassau County) Mr. Kraut – Interest Dr. Lim – Abstaining	Contingent Approval

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231361 B	Tidal Home Dialysis (Kings County) Mr. LaRue - Interest	Contingent Approval

Home Care Service Agency Licensures

Changes of Ownership

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	231120 E	Health Quest Home Care, Inc. (Licensed) (Geographical Service Area: Dutchess, Orange, Putnam, And Ulster Counties) Mr. Kraut – Recusal	Contingent Approval

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

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	232088 E	Sheepshead Bay Surgery Center (Kings County)	Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	232080 B	ALEF Health Center LLC (Richmond County)	Contingent Approval
2.	232106 B	New York Healthcare and Wellness (Bronx County)	Contingent Approval
3.	232133 B	Namo Health Inc (New York County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	202035 E	Hilaire Care Network LLC d/b/a Pine Forest Center for Rehabilitation and Healthcare (Suffolk County)	Contingent Approval
2.	222260 B	Oxford Nursing Home (Kings County)	Contingent Approval

Home Care Service Agency Licensures

Changes of Ownership

	<u>Number</u>	<u>Applicant/Facility</u>	<u>EPRC Recommendation</u>
1.	222103 E	Lincare Of New York, Inc. (Geographical Service Area: Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Seneca, Schenectady, Schoharie, Schuyler, Steuben, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, and Yates Counties)	Approval
2.	222104 E	American Outcomes Management, LP (Geographical Service Area: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties)	Approval
3.	231216 E	Tanglewood Manor, Inc. (Geographical Service Area: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties)	Approval
4.	232021 E	Ideal Care SP LLC (Geographical Service Area: Ulster County)	Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

Applicant

Lake Shore Hospital Foundation, Inc.

Open Door Family Medical Center, Inc.

EPRC Recommendation

Approval

Approval

Certificate of Amendment of the Articles of Organization

Applicant

Pontiac Nursing Home, LLC

EPRC Recommendation

Approval

Restated Certificate of Incorporation

Applicant

The Guidance Center of Westchester, Inc.

EPRC Recommendation

Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

IX. NEXT MEETINGS

March 28, 2024 (ALBANY)

April 11, 2024 (ALBANY)

X. PROFESSIONAL

Executive Session – Report of the Committee on Health Personnel and Interprofessional Relations

XI. ADJOURNMENT

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

Public Health and Health Planning Council 2025 Timeline

<u>PHHPC Committee Meeting</u>	<u>PHHPC Full Council Meeting</u>	<u>Main PHHPC Meeting Location</u>
01/23/25	02/06/25	NYC
03/27/25	04/10/25	Albany
06/04/25 WEDNESDAY	06/18/25 WEDNESDAY	NYC
08/21/25	09/18/25	Albany
11/13/25	12/4/25	NYC

Main meeting site is listed, however there may be multiple meeting locations available for attendance by PHHPC members, applicants, and members of the general public.

Albany Location – Empire State Plaza, Concourse Level, Meeting Room 6 – Meeting begins at 10:15 a.m. (meeting location and start time is subject to change upon notice)

NYC Location - 90 Church Street, Meeting Rooms A/B, 4th Floor, NY, NY – Meeting begins at 10:00 a.m. (subject to change upon notice)

Adopted

State of New York
Public Health and Health Planning Council

Minutes
November 16, 2023

The meeting of the Public Health and Health Planning Council was held on Thursday, November 16, 2023 at 90 Church Street, 4th Floor CR 4 A/B, New York, New York.
Mr. Jeffrey Kraut, Chair presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett Dr. Howard Berliner Dr. Jo Ivey Boufford Dr. Gary Kalkut Mr. Jeffrey Kraut Mr. Scott LaRue Mr. Harvey Lawrence Dr. Sabina Lim Ms. Ann Monroe	Mr. Peter Robinson Dr. John Rugge Dr. Denise Soffel Ms. Nilda Soto Dr. Theodore Strange Dr. Anderson Torres Dr. Kevin Watkins Commissioner McDonald –Ex-Officio
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DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|---|---|
| Ms. Zahra Alaali – Zoom
Ms. Lynn Baniak – Zoom
Ms. Alana Belanger – Zoom
Dr. Ursula Bauer – Zoom
Dr. Debra Blog – Zoom
Ms. Joanne Criscione – Zoom
Mr. Jason Corvino – Zoom
Ms. Val Deetz – Zoom
Mr. Vince DiCocco – Zoom
Mr. Steven Dziura – Zoom
Ms. Sue Edwards – Zoom
Mr. Kenneth Evans – Zoom
Mr. Mark Furnish – NYC
Ms. Shelly Glock – NYC
Mr. Ryan Greenberg – Albany
Mr. Adam Herbst – NYC
Dr Eugene Heslin – NYC
Ms. Geraldine Humbert – Zoom
Mr. Jonathan Karmel – Zoom
Ms. Salman Khan – Zoom | Ms. Colleen Leonard- NYC
Ms. Karen Madden – Zoom
Mr. George Macko – Zoom
Ms. Kathy Marks - NYC
Dr. John Morley - Zoom
Ms. Johanne Morne - Zoom
Ms. Marthe Ngwashi - NYC
Mr. Jason Riegert - Zoom
Mr. Shane Roberts - Zoom
Mr. Mark Schweitzer – Zoom
Mr. Robert Serenka
Ms. Jackie Sheltry - Zoom
Mr. Michael Stelluti -NYC
Ms. Jennifer Treacy - Zoom
Mr. Matthew Wiley
Ms. Patricia Wrobel - NYC |
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INTRODUCTION

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

APPROVAL OF THE MINUTES OF SEPTEMBER 7, 2023

Mr. Kraut asked for a motion to approve the September 7, 2023 Minutes of the Public Health and Health Planning Council meeting. Dr. Boufford motioned for approval which was seconded by Dr. Berliner. The minutes were unanimously adopted. Please refer to page 1 of the attached transcript.

DR. ANDERSON TORRES

Mr. Kraut called upon Mr. Marrero from the Department to make a special announcement. Mr. Marrero stated that in October of 2023, the Department held its first Hispanic Heritage Month commemoration in the history of the Department. There were over 100 staff members in attendance along with Dr. Torres. Mr. Marrero presented Dr. Torres with a resolution and Inaugural Award for his distinguished service and dedication to excellence and lifting up the Hispanic and Latino communities. Members of the Council congratulated Dr. Torres. Please see pages 1 through 3 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Department of Health

Mr. Kraut introduced Dr. McDonald to give the Report on the Activities of the Department.

Dr. McDonald began his report on the topic of the Commission on the Future of Health Care. On November 2, 2023, Governor Hochul's Commission on the Future of Health Care held their first meeting fulfilling a commitment made in the Governor's 2023 State of the State address. The health care ecosystem is evolving both in New York and nationally due to a lot of reasons, not least which is an aging population, changing patient preferences, rising costs of prescription drugs, new innovations in technologies, behavioral health crisis and persisting health related social needs. While New York faces many challenges that represent a great opportunity. Dr. McDonald noted that those challenges, thoughtful intervention is required to protect and improve care for all New Yorkers. The goal of the Commission is to ensure that the limited resources of the state and other health care payers are optimized to enable the delivery of accessible, equitable, high quality health care for all New Yorkers through a resilient health care ecosystem and a strong health care workforce. The Governor selected some of the foremost practitioners, policy experts in New York and nationally with experience in health care delivery, insurance, long-term care workforce, health equity, innovation and technology and beyond. The Governor has asked the Commission to take a holistic look at New York's health care. Data driven in prioritizing areas for focus and identifying areas where there appears to be the greatest opportunity to improve the resilience of the overall health care market in New York State. The

Commission will serve as an independent advisory task force for the Governor with a long-term mandate. The focus is on building a resilient health care enterprise for the long run, not on meeting short term targets. The Commission does look forward to hearing input from the public and health care stakeholders, as well as drawing on their experience and recommendations as they put these recommendations together. Dr. McDonald stated that he looks forward to being involved with the Council every time as the Commission gets its footing and seeks his input.

Commissioner McDonald next spoke on the topic of workforce. The Commissioner stated that he continues to travel the state where he listens and keeps hearing from every hospital system is the concerns with workforce. The shortages in nursing, physicians and other health care workers, lab workers, diagnostic imaging and just shortages everywhere. A lot of hospitals are doing a lot of novel things to actually address this. Dr. McDonald noted that we need to look at as a state, particularly in the next legislative session is how we can look at mitigating this. Some of this might be the licensure compacts. Forty-one states have looked at the nurse licensure compact. New York needs to look at this very closely especially when thirty-nine states would look at a physician licensure compact I think we need to look at that as well. Dr. McDonald said that one of the things we also need to look at is how other states approach health care workforce is it is really common for other states that health care workers work at the top of their license. Whereas, in New York we should really embrace that perhaps as much as we could, there is some room in there for some partnership for New York to look at in the next legislative session in particular about how we let people work at the top of their license and really help mitigate some of the workforce crisis that we have in New York.

Commissioner McDonald said that it is fair to say we have achieved detente with the COVID virus. It is still not settled into a seasonal pattern. Hospitalization for COVID have continued to decrease in the last several weeks of November 2023. There is about 1,100 people in the hospital as of November 16, 2023 with a positive COVID test. Last year at this time it was roughly 3,000 and rising. It is clear that right now we are in a different place, the vaccine transition to the commercial market, the new vaccine came out on September 15, 2023. Commissioner noted that there were some bumps in the transition to the commercial market such as issues with billing in the beginning. Dr. McDonald expressed that he was very thankful to the Department's Office of Health Insurance Programs in resolving their own billing issues very quickly with the Medicaid recipients and was handled very nicely by them. Commercial insurers resolved their issues as well rather quickly. Supply of the vaccine was challenging at the beginning, but is less of a challenge now.

Dr. McDonald advised that in mid-October 2023, the Department started sending out nursing home Dear Administer letters every week, just updating on what the Department is seeing as far as vaccine uptake in nursing homes as obviously there is a concern about the nursing home population. The Department is helping nursing homes overcome some of the barriers they have in getting their residents vaccinated. The Department is trying to be reasonably good partners and help with this commercial transition. The vaccine was originally rolled out in nursing homes were the highest priority as they should have been. In 2023 you can see the transition in the commercial market they were not the highest priority, they moved in

with everybody else in the commercial market. The nursing homes did not get the vaccine the same time that other people in the commercial market did which has affected some of their ability to actually vaccinate their residents. Dr. McDonald expressed his concern and noted that the Department staff is doing quite a bit to partner with nursing homes, try to encourage them and help them solve the barriers, whether it's billing, whether it's other issues to really get as many of the nursing home population vaccinated as much as possible.

Dr. McDonald encouraged all New Yorkers to get that COVID and flu vaccine if you haven't done so already. The Department has data on the COVID vaccine on the Department's website. There is no law that requires anyone's COVID vaccine to report to the state. It tells you on the webpage it's underreported data. It is data, nonetheless. The 2nd week of November, 2023 about 1.3 million vaccine doses are reported to the Department. It is important that people recognize COVID is very much still with us. The best way to keep yourself out of hospital and missing out on life is just get your vaccine. Commissioner McDonald stated that he is very thankful the Wadsworth Lab continues to do a nice, robust whole genomic sequencing. The Department is keeping track of the variants. As of November we are still dealing with Omicron.

Dr. McDonald stated that in early October 2023, the Department received a request from the Pharmaceutical Society of the State New York. They were explaining a problem they were running into that some independent pharmacies did not have a standing order to give COVID vaccine like they had during the public health emergency. The Department of Health's immunization team created a beautiful standing order for the Commissioner. A non-patient, specific standing order stating the Commissioner has the authority to do that. The signed order was sent to the pharmacy side of the State in New York. This is also a health equity issue, people go to the pharmacy, sometimes rural areas of the state cannot acquire a vaccine because lack of a standing order. That is a barrier that the Department wanted to fix. He noted that it just underscores that solving health equity issues is often very intentional and needs to be happened here. Commissioner McDonald said he very thankful to his immunization team for helping us write a very thorough non patients standing order.

Commissioner McDonald's fourth topic is RSV and said he is very thankful we have the two RSV vaccines for adults greater than 60 with a qualified co-morbidity. Many pharmacies have the vaccine, but do not have any way of giving it because we do not have a signed standing order. The Department's immunization team put together a nice signed non patients order for RSV and sent it out in October 2023. The order was updated it a little over a week ago to include people who are pregnant because the Food Drug Administration authorized RSV vaccine for individuals who are pregnant.

Commissioner McDonald noted that he is thrilled to have a RSV vaccine for babies. The supply is not what we would hope it would have been but thankful the demand was higher than the manufacturer expected. He said he expects the supply of the 50 milligrams dose to grow quicker than the 100 milligrams dose. The babies under 11 pounds would get a 50 milligrams dose should be in better shape sooner. The vaccine supply is lower than we need which underscores the importance of why that maternal vaccine for pregnant women be available is just

another way that people who are pregnant can protect themselves and their baby. He expressed that it is thrilling as a pediatrician of thirty-three and a half years to actually be able to prevent the disease that we had no treatment for and still do not.

Lastly, the Commissioner spoke on the topic of cybersecurity. If you are in a hospital, cybersecurity is top of mind for everybody, it is the world we live in right now. Cyber-attacks occur also daily for most hospitals. The Department has rolled out a draft of regulations for cybersecurity and seeking public comment which is really important for the public's input. The Governor earmarked half a billion dollars. That's \$500,000,000 for hospitals of all sizes to help implement these regulations.

Commissioner McDonald concluded his report. To view the complete report and questions and comments from members please see pages 3 through 13 of the transcript.

Report on the Activities of the Office of Aging and Long Term Care

Mr. Kraut welcomed Mr. Herbst to give the Report on the activities of the Office of Aging and Long Term Care.

Mr. Herbst began his report by congratulating Dr. Torres on his wonderful achievement on behalf of what you do in our industry. He advised the Office of Aging and Long-Term Care is spending a considerable amount of time looking at policies and the intricate landscape of long-term care in the macro sense. The mission has aligned with a lot of the priorities that were put into the package here in terms of our commitment to fostering a system in our state that ensures dignity and independence and quality of care for our aging population. That is something that remains that the Department is unwavering and committed to. The Commissioner and the Governor's Office, the Governor herself are committed to this mission and the vision of the Office of Aging and Long-Term Care.

Mr. Herbst stated that the Department has been focused quite a bit on hospice regulations. New York State exhibits the lowest utilization of hospice services nationwide. Recognizing this, the staff is working very hard at the moment to promote the appropriate use of hospice care in the state of New York. The Department hears from advocates, the industry, and caregivers and loved ones. To that end, staff has been crafting new regulations to engage in our conversation with this body and also stakeholders. The intention is to hopefully put together a package in early 2024 for a simplified, efficient set of regulations that will help the public with hospice care and a new methodology there. Same thing with respect to our work on certified home health agencies, our nursing home methodology. The Department is working right now very hard to look at the process, drafting regulations and updating these recommendations that will present to the Council.

Mr. Herbst spoke about the Program for All-Inclusive Care for the Elderly, known as PACE. Two years ago, the former Medicaid Director, Brett Friedman, presented at PHHPC and he noted that he also presented at this body on PACE. PACE is a federally recognized model of comprehensive care for people over the age of 55 who qualify for nursing home levels of care

and who wish to remain in their community. He stated that the current Medicaid Director, Mr. Bassiri and himself are committed to this PACE program, ensuring that those included for the Medicaid and Medicare covered benefits have the right type of services. The Department is looking for the enactment of a new Article 29 PACE licensure statute and is currently working very hard to develop the necessary PACE licensure regulations which is to be presented to this body with respect to the new statute and regulations in the first quarter of 2024.

Mr. Herbst moved to the topic of the Nursing Home Safe Staffing Program. The Department of Health and the Governor's Office strongly supports minimum staffing requirements for nursing homes and long-term care facilities to ensure residents safety and well-being. The state has enacted its own minimum staffing standards for nursing homes under state Public Health Law Section 2895B. Staff has been doing a lot of education at the Department of Health with the administrator letters, with webinars and educational informational training and education to ensure that the industry is prepared for any questions that may come up with respect to the Nursing Home Safe Staffing Program. The Department works with the industry, and encourages the industry to reach out to the department if they have questions. Staff is providing more education and training, ensuring the that the industry is aware of where the Department is on this and how our opinion continues to be with respect to ensuring resident safety and well-being in nursing homes.

Mr. Herbst lastly noted that the Commissioner mentioned COVID vaccine in his report. Mr. Herbst reiterated the message that the Department is dedicated to pushing out, remind all nursing homes to have their residents and their staff get the updated vaccine. Staff has been working very hard with the nursing home industry and all industries to help push the COVID vaccine. The Department has changed the methodology, the information that gives us the collection of data, shortened the daily HERD's survey. This way the Department is working with the industry. Again, pushing the important message that nursing homes should tell their residents and their staff to get the updated vaccine.

Mr. Herbst explained one other flag that the Department continues to work on our hospital at home, work in expanding our settings for the hospital home. I know many people on this body are very interested in that. He noted that he looks forward to coming forward in the next cycle, the next meeting to give updates with respect to where we are with this. This is something that the Governor's Office is committed to as well. Staff continues work on the Master Plan for Aging, a multisectoral initiative that is aimed to ensure all New Yorkers can age in the State of New York with independence and a dignity in their own settings for as long as possible. The Department issued a preliminary report in August, 2023. Staff is now working on an interim report that will be issued to the Governor and released to the public hopefully in early 2024. Mr. Herbst expressed that the Council members are integral in the work and appreciates the partnership with the PHHPC body and encouraged the cross collaboration in helping the master plan become successful in allowing New York to continue to be a leader in aging and long-term care.

Mr. Herbst concluded his report. To see the complete report please see pages 13 through 16 of the transcript.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Mr. Kraut introduced Mr. Robinson to give the Report of the Committee on Establishment and Project Review.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231325 C	NYU Langone Hospitals (Nassau County) Dr. Kalkut – Recusal	Contingent Approval

Cardiac Services Construction – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231103 C	NYU Langone Hospital-Brooklyn (Kings County) Dr. Kalkut – Recusal Interest – Dr. Lim	Contingent Approval

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231108 C	NYU Langone Hospital-Long Island (Nassau County) Dr. Kalkut – Recuasl Dr. Lim - Interest

Mr. Robinson stated there was a Special Meeting of the Establishment Committee held earlier in the meeting. Mr. Robinson called applications 231325, 231103, and 231108. Mr. Robinson noted a conflict and recusal by Dr. Kalkut and an interest by Dr. Lim for applications 231103 and 231108. Mr. Robinson motioned for approval. Dr. Torres seconded the motion. The motion carried with Dr. Kalkut's conflicts. Please see pages 16 and 17 of the attached transcript.

Application for Establishment and Construction of Health Care Facilities/Agencies

Acute Care Services - Establish and Construct

<u>Number</u>	<u>Applicant/Facility</u>
1. 231288 E	Our Lady of Lourdes Memorial Hospital (Broome County)

Mr. Robinson called application 231288 and noted for the record that it was from the special meeting of the Establishment Committee. Mr. Robinson motions for approval, Dr. Watkins seconds the motion. Mr. Kraut noted Mr. LaRue abstained. The motion passes. Please see page 17 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Application

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 231044 E	Sunset SNF Operations LLC d/b/a Sunset Lake Center for Rehabilitation and Nursing (Sullivan County) Dr. Berliner – Opposed at EPRC Ms. Monroe – Opposed at EPRC	No Recommendation

Mr. Robinson noted for the record application 231044 was deferred at the Department's request. Please see page 18 of the transcript.

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	192204 E	Highland Nursing Home, Inc. d/b/a North Country Nursing & Rehabilitation Center (St. Lawrence County)	Contingent Approval
2.	231011 E	Fairport SNF LLC d/b/a Fairport Skilled Nursing & Rehab (Monroe County)	Contingent Approval
3.	231259 E	Tupper Lake Center LLC d/b/a Tupper Lake Center for Nursing and Rehabilitation (Franklin County)	Contingent Approval

Home Care Service Agency Licensures

New LHCSA's

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

Changes of Ownership

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222238 E	Auburn Assisted Living LLC (Geographical Service Area: Cayuga County)	Contingent Approval
2.	222220 E	Kris Agency And Home Care, Inc. (Geographical Service Area: Bronx, Kings, Nassau, New York, and Queens Counties)	Contingent Approval

- | | | | |
|----|----------|--|----------|
| 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) | Approval |
|----|----------|--|----------|

Mr. Robinson called applications 192204, 231011, 231259, 231010, 222238, 222220, and 222255. Mr. Robinson noted these applications had no recusals, abstentions, or interests. Mr. Robinson motioned for approval, Dr. Berliner seconded the motion. The motion carries. Please see page 18 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 231369 E	Westside ASC LLC d/b/a Westside Ambulatory Surgery Center (New York County)	Contingent Approval

Mr. Robinson called application 231369 and noted for the record Dr. Lim had a conflict and recusal. Dr. Lim exited the room. Mr. Robinson motioned for approval, Dr. Berliner seconded the motion. The motion carries. Please see page 19 of the attached transcript.

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 231380 B	Mohawk Valley Surgery Center (Oneida County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221277 E	Medcare LLC (Kings County)	Approval

Mr. Robinson called applications 231380 and 221277. Mr. Robinson motioned for approval, Dr. Bennett. seconded the motion. The motion carries. Please see pages 19 and 20 of the attached transcript.

Certificates

Restated Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Rochester General Hospital Association, Inc. (Monroe County) Mr. Thomas - Interest	Approval

Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The Foundation of Catholic Health (Erie County)	Approval

Certificate of Assumed Name

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
VJJ Holding Company, LLC (Suffolk County)	Approval

Certificate of Dissolution

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
DOJ Dialysis Center Corp.	Approval
Wartburg Nursing Home, Inc.	Approval
Greater Harlem Nursing Home and Rehabilitation Center, Inc.	Approval

Mr. Robinson called the Restated Certificate of Incorporation for Rochester General Hospital Association Inc and noted Mr. Thomas declared an interest. Mr. Robinson also called the Certificate of Incorporation for the The Foundation of Catholic Health, the Certificate of Assumed Name for VJJ Holding Company LLC, and Certificate of Dissolution for DOJ Dialysis Center Corp., Wartburg Nursing Home, Inc., and Greater Harlem Nursing Home and Rehabilitation Center, Inc. Mr. Robinson motioned for approval and Dr. Berliner seconded the motion. The motion passed. See page20 of the attached transcript

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

Dr. Robinson concluded his report. Mr. Kraut thanked Mr. Robinson.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

23-07 Amendment of Section 405.45 of Title 10 NYCRR
(Trauma Centers – Resources for Optimal Care of the Injured Patient)

Mr. Kraut introduced for emergency adoption Amendment of Section 405.45 of Title 10 NYCRR (Trauma Centers – Resources for Optimal Care of the Injured Patient) and motioned for adoption. Dr. Watkins seconded the motion. The motion for emergency adoption carried. Please see pages 20 and 21 of the transcript.

For Adoption

23-18 Amendment of Section 2.1 of Title 10 NYCRR (Communicable Diseases Reporting and Control - Adding Respiratory Syncytial Virus (RSV) and Varicella)

Mr. Kraut introduced Amendment of Section 2.1 of Title 10 NYCRR (Communicable Diseases Reporting and Control - Adding Respiratory Syncytial Virus (RSV) and Varicella) and motioned for adoption. Dr. Watkins seconded the motion to adopt. The motion carried. Please see page 21 of the transcript.

For Information

20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)

23-20 Addition of Section 405.46 to Title 10 NYCRR (Hospital Cybersecurity Requirements)

21-21 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care)

Mr. Kraut stated that Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements), Addition of Section 405.46 to Title 10 NYCRR (Hospital Cybersecurity Requirements), and Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care) were presented for information. Please see pages 21 and 22 of the transcript for members questions and comments.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Public Health

Mr. Kraut introduced Dr. Bauer to give the Report on the Activities of the Office of Public Health.

Dr. Bauer began her report by sharing highlights from activities with the Wadsworth Center Public Health Laboratory and their work across the state and the Northeast, as well as nationally in terms of sharing their expertise. The CDC's proposed One Health Agenda and the Wadsworth comments on that new framework. The Department endorses that framework. The Department notes that substantial and sustained federal investment, particularly around vector surveillance and surveys of wildlife and livestock, will be needed, along with increased emphasis on investigating and communicating the relationship between environmental changes and zoonoses. Also, the framework focuses on collaboration across federal agencies. The Department noted the importance of bringing states into that and establishing some pilot programs at the state level to implement a comprehensive One Health Surveillance Program to get ahead of some of these crises that may be emerging as opposed to detecting and reacting at a later date.

Dr. Bauer stated that the Center for Environmental Health and the work that they are doing to advance several initiatives involving legislative or regulatory changes that will better safeguard New York State residents from contaminants in their water, homes and environment. For example, the Center is administering federal funding from the bipartisan infrastructure law that enhances the existing Drinking Water State Revolving Loan Fund to support replacement of lead service lines, the removal of emerging contaminants from drinking water, and the upgrading of aging and inadequate water supply infrastructure. The final intended use plan for the Drinking Water State Revolving Fund projects to upgrade infrastructure and address emerging contaminants that is posted on the Department's website. Applicants for lead service line funding are still being scored and processed. The draft intended use plan for these projects should be announced by early 2024.

Dr. Bauer mentioned the Department's work addressing lead in school drinking water. Revisions to Public Health Law 1110 lowered the action level for lead in school drinking water from 15 parts per billion to 5 parts per billion, and then increased the frequency of lead testing from every five years down to every three years, effective at the end of 2022. The Health Department has been working with its partners in the State Education Department to operationalize these changes and provide guidance to schools. Draft Regulations for Title 10 Part 67-4 were posted to the New York State Register in September, 2023. Public comment closed in November.

Dr. Bauer stated that Department's Center for Community Health, Division of Family Health received a \$10,000,000 five-year grant award from the Health Resources and Services Administration to decrease maternal and infant morbidity and mortality and improve outcomes for birthing people and infants in New York. The funding will be used to convene a Maternal Health Task Force to assess maternal care and coverage, identify gaps that affect maternal health outcomes, and assist in the development of a strategic plan. Funds will also be used to improve state level maternal health data and surveillance by looking at severe maternal morbidity and associated disparities, examining low risk cesarean births and improving data linkage between our PRAMS, the Pregnancy Risk Assessment Monitoring System and other maternal data sources. We'll also implement two initiatives. One, a perinatal project ECHO. The Extension for Community Health Care Outcomes, which is a mentoring model to expand and enhance the capacity of hospital and community based providers that serve in medically underserved areas, or in this case, also maternity care deserts, and then a universal postpartum virtual home visiting initiative that will start out in St. Lawrence and Cortland counties and involve collaborating with a pair of birthing hospitals and established perinatal home visiting programs in each county.

Dr. Bauer announced that the Office of Science completed a major improvement to five of our public health data dashboards. The Prevention Agenda Dashboard has been upgraded and to provide our 99 key performance indicators with new utility and updated data at the state, regional and county levels and even in some instances at the sub county level. There are a number of dashboards with the Community Health Indicators Reports, Asthma Dashboard, the Maternal and Child Health Dashboard and the Opioid Dashboard.

Dr. Bauer concluded her report. Please see pages 22 and 23 of the transcript.

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

Mr. Kraut introduced Dr. Morley to give the Report on the Activities of the Office of Primary Care and Health Systems Management

Dr. Morley began his report by updating the Council on emergency medical services. He noted that he reported at the last time Council meeting on some issues involving the care of the incarcerated population at Green Haven Correctional Facility. Dr. Morley happily reported that the Department of Corrections has identified emergency services that will be providing care in that area. This issue has led the Department to pursue some changes and so we will be proposing statutory changes to the Governor and to the Governor's Office as it relates to emergency medical services coverage and availability.

Dr. Morley next moved to the topic of emergency preparedness, and stated that the Council has heard from the Commissioner related to the events of cybersecurity, which is high profile in the news these days. One hospital Health Alliance made the decision on their own to transfer all of the patients out when they had a cyber event to Westchester Medical Center in order to better deal with the process. As the Commissioner mentioned, the executive's budget has proposed \$500,000,000 just for I.T. purposes. It's not just for hospitals. \$500,000,000 is set aside for I.T. purposes and can be used for cybersecurity events.

Dr. Morley stated that Catholic Health opened its new hospital in Lockport under the Saint Mary's license. There are currently three hospitals, Claxton, Hepburn, Massena and Wyoming Hospital in the process of application to become a critical access hospital.

Dr. Morley concluded his report. Please see pages 23 through 26 of the transcript.

PUBLIC HEALTH SERVICES

Mr. Kraut introduced Dr. Boufford to give a report on the recent activities of the Public Health Committee.

Dr. Boufford began her report by bringing the Council up to speed about a number of meetings that have been held since June, 2023. The Public Health Committee has met three times as of November 15, 2023 and the Ad Hoc Committee to advise on the Prevention Agenda has also met a couple of times. The Public Health Committee in partnership with Dr. Bauer and her team, Dr. Roberts and colleagues in the Office of Public Health Practice is really having a series of panels and discussions in order to get feedback on the most recent cycle of the Prevention Agenda in preparation for its successor cycle, which is 2025 to 2030. The Committee and Ad Hoc has had sessions involving sister agencies such as the Office of Mental Health, Office of Addiction Services and Supports, Office of the Aging, and Department of State who were core partners, if you will, in the last round of the Prevention Agenda. One of the goals was very much mental health and substance use addressing prevention in those spaces. Our colleagues in the Department of State have been really helpful in supporting and picking up how various of their regional economic development agendas could be tied to health promoting projects like greenspace or walkability or

other priority areas, especially in some of the cities. They have also supported, along with New York State Office of the Aging, technical assistance on implementation of the Prevention Agenda for the last several years before COVID and during COVID on a virtual basis. They have been very involved. Dr. Boufford expressed that she wanted to recognize their engagement with the Council and Committee.

Dr. Boufford stated that the Committee and Ad Hoc had meetings where the panel with New York State Office of the Aging been part of New York State, local health department group has been part of a couple of hearings, and most recently at one on the Ad Hoc Committee, the Greater New York Hospital Association and The Healthcare Association of New York State served on a panel discussing their feedback on the most recent cycle of the Prevention Agenda. She noted that the findings have been useful in the sense that everybody agreed that the Prevention Agenda has been a vehicle, possibly the major vehicle for putting prevention, if you will excuse the expression on the agenda of the State Health Department and the State health activities. The model at the local level is for local hospitals, health systems and health departments with stakeholders in each community and each county to sort of select a couple of items from the statewide agenda that are relevant to their local area and to try to address disparities. There is an infrastructure there where that infrastructure at the local level is very valuable. This initiative has not been funded separately. The questions that come up, especially with the New York State Office of the Aging, the Office of Addiction Services and Supports, and the Office of Mental Health is they also have local presence at county level, at regional level and others from federal pass-through dollars area, offices on aging, etc. In many counties, those entities, those groups have been working together with local health departments successfully over the last several years. In others, the partnership has not been quite what we might have liked but then there's been that COVID interruption, which is problematic. Dr. Boufford noted that it is more than a State led set of priority areas. Over the last twelve years, efforts have been made to build local connections and local infrastructure to implement.

Dr. Boufford stated the second thing that has come out is that it has been seen as a helpful heuristic device for the Healthy People 2020, 2030 at the federal level is sort of saying we know there is a structure going on. We can use it to help us bill prevention capabilities within agencies and locally, stating it is important and a nice point of visibility. The Committee is working on ways of how that might be retained in another cycle.

Dr. Boufford said she is delighted to hear about the dashboard work and the improvement in the health data. The dashboard was seen by everyone as being quite valuable but it had not been updated in a significant way since before COVID. Similarly, because the last time the operational objectives for the Prevention Agenda were revised was 2019. There has been a lot of interest because the evidence is much stronger now about the important role of social determinants of health in prevention and the implications of that for the next round of the prevention agenda. Dr. Boufford noted that there are 99 objectives. Is that too many? Probably the answer is yes. Could we streamline them? Could we update the targets? Could we update the material that was provided to local health departments and agencies? The Committee would have to discuss with our hospital colleagues about the fact that their collaboration at local level, it now is close to the 50% level that

there is a joint process of looking at a community health needs assessment. This has been ten years after encouraging this to happen as part of the State Health Improvement obligations under community benefit. The Committee would like to see more of that. Dr. Boufford advised that there was also a presentation on Community Benefit focusing especially on the category called Community Health Improvement, which is the category defined by IRS within the link, which is not Graduate Medical Education or unreimbursed care or any of the big-ticket items. In fact, looking at the returns from hospitals it comes to about between \$2,000,000 and \$300,000,000 a year in that category. There is a colleague at the University Albany School of Public Health who was working in the Department, and getting his PhD looking at this data in a very granular fashion. There are hopes that that might be channeled in the direction of a local priorities identified by the Prevention Agenda.

Dr. Boufford stated there will be Public Health Committee meeting on December 5, 2023. At that time, there will be a report on the revision of the State Health Needs Health Assessment, which was the driver of the current Prevention Agenda. Dr. Boufford mentioned that the question of what are the major causes of preventable morbidity and mortality in the State? That was used to drive the priorities that were selected. New data will be available on that. The Department under Dr. Bauer's leadership and Dr. Roberts have been looking at across multiple states that are doing State Health Improvement Plans. What models are they using? How are they organizing themselves? Also considering other options to the current structure of the Prevention Agenda. It will be an important meeting to hear the initial options that the Department is thinking about relative. One of which is continuing the current structure updated, but other options that the Department is considering. Hopefully, then the next cycle being 2025 to 2030 would be guidance on the next cycle of Prevention Agenda and beginning to work through the details of that would happen in the first and second quarter. The hospitals would have six months or so to prepare documents to submit for the next cycle. There are other conversations going on about how frequently the cycle should be operating, etc. Those are other things that have come up in the course of our discussions. She stated the other thing that the Public Health Committee has historically done is to pick a priority health issue in the state to work on in addition to its sort of regulatory statutory role of overseeing the Prevention Agendas.

Dr. Boufford noted that at November 15, 2023 Public Health Committee meeting they heard the first report on the public health workforce, which was an issue that has come up. Obviously, the health care delivery workforce is being addressed in other areas. There is a workforce conversation going on in virtually every state agency. She noted that the Council might want to consider how those dots might be connected at some point. There is a new Office of Public Health Workforce, Keshana Owens-Cody is the Director who gave us a nice presentation of her office, the staffing expectations. It is funded as part of the Biden State Infrastructure Bill, which public health was able to sequester finally some money for that public health infrastructure. There are three pillars to that work in health departments, funding is coming to New York Health Department focusing on workforce, on infrastructure and then on data improvement. The Committee heard their first presentation and had a nice conversation with Ms. Owens-Cody of wanting to see how we can partner with them, how we could bring some of the issues she is facing to the public. The Committee might be able to convene, as they did before with maternal mortality across the Department and with other agencies.

Lastly, Dr. Boufford indicated that there was an update at the November 15, 2023 meeting on maternal mortality from colleagues Kristen Siegenthaler and her colleagues just to give us that because that was one of the first issues we took on and actually had a white paper coming out of the council on it about five or six years ago, which likely was important and leading to the Governor's Commission on Maternal Mortality.

Dr. Boufford concluded her report. To review the full report and questions and comments from Council members please see pages 26 through 29 of the transcript.

ADJOURNMENT:

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

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL COMMITTEE MEETING
NOVEMBER 16, 2023 9:15 AM
90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC
TRANSCRIPT

Mr. Kraut I'm Jeff Kraut. I have the privilege to call to order the November 16th, 2023 meeting of the Public Health and Health Planning Council. Welcoming Members, Commissioner McDonald, who's joining us from Albany, participants and observers. This morning I talked about the importance of the filing a record of an appearance form with us, which you can do with www.NYHealth.Gov. I gave suggestions about how to make the virtual meeting successful. We're going to comply with the Open Meeting Law. We're doing synchronized captioning with the webcasts. I hope that people will not speak over themselves. I want to make sure that members of the public join the department's Certificate of Need Listserv. We regularly send out important council information; notices such as our agenda, our meeting dates and our policy matters. We have printed instructions on the reference table on how to join that. You'll also find that in our website as well. You can always reach out to the Secretary to the Council, Ms. Colleen Leonard for help. Today, we're going to hear from Commissioner McDonald, Mr. Herbst, Dr. Bauer and Dr. Morley. Ms. Kim could not join us this morning. She has given us a written report for the Office of Health Equity and Human Rights. We're going to present regulations for council action and then turn it over to the establishment of actions from the committee and then we'll hear from Dr. Boufford and Dr. Ruge about their committees. As you know, most of our guests who attend this meeting, you're now familiar that we've organized our agenda by topics or categories. Part of that includes the batching of Certificate of Need Applications, which we have planned for today according to the agenda. If anybody wants to remove an application from a batch you should do so now, and we'll move that to a different category. Just let Ms. Leonard know as well.

Mr. Kraut Let me just get a motion to adopt the minutes first for the September 7th, 2023, Public Health and Health Planning Council.

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

Mr. Kraut A second, Dr. Berliner.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Kraut I'm now going to ask Mr. Marrero from the department to come up and make a special award presentation.

Mr. Marrero Here we go.

Mr. Marrero I should know we set these up.

Mr. Marrero Good morning to all of you. Thank you for the lovely invitation to join you this morning at this meeting. For those of you who do not know me, I am Edgardo Marrero. I'm the Director of Operations in the Metropolitan Area Regional Office for the Department of Health. I've been invited here to make a special presentation to one of your members. For context, last month the department held its first Hispanic Heritage Month commemoration in the history of the department. We've never had one until last month. Of all the names that were submitted as contenders to be presenters, featured speakers to talk about the Hispanic community and things that lift up the community one name rose to the top, and that was Dr. Anderson Torres. We had an amazing celebration in this very room. There were over 100 staff members here from all walks of life, from throughout the region to hear Dr. Torres speak. It was truly an inspiring, inspiring afternoon. We are truly grateful to Dr. Torres. Unfortunately, he could stay for the entire event. He had to leave to go to Portugal. I'm here to make this presentation to him before the entire council and members of the public. Whereas Dr. Anderson Torres, a native of Ponce, Puerto Rico and a New Yorker for more than fifty-three years, is a dedicated psychotherapist with more than forty years' experience in patient centered care. Whereas, Dr. Anderson Torres serves as president and CEO of Total Care Inc overseeing twenty programs, integrating services that include home attendance services, thirteen full service senior centers in the Bronx, and one in Upper Manhattan, home delivered meals, integrated care coordination, housing, case management, advocacy, Alzheimer's Caregiver Program, transportation for seniors, feeding the hungry and homeless, mobile food kitchen and intergenerational programs. Very busy guy. Whereas, Dr. Anderson Torres is also a member of the New York State Public Health and Health Planning Council, President of the Board of Directors of Catalina in Puerto Rico, and a co contributing author of Latinx in Social Work Volume II Stories that Heal, Inspire and Connect Communities. Whereas the New York State Department of Health Metropolitan Area Regional Office recently held its inaugural Hispanic Heritage Month commemoration on October 4th, 2003. Whereas, Dr. Anderson Torres served as our honored guests and featured speaker, did so and served to inspire nearly one hundred Department of Health frontline staff in the region. Therefore, in grateful appreciation of your distinguished service and recognition of your hard work, dedication and commitment to excellence and lifting up the Hispanic and Latino communities and all New Yorkers your programs reach the New York State Department of Health, Metropolitan Area Regional Office, and the Hispanic Heritage Month Commemoration Committee 2023 is honored to present you with this Inaugural Award. I, Edgardo Marrero, Chairman of the Hispanic Heritage Month Committee, respectfully request that this recognition be entered into the official record of these proceedings on this 16th day of November 2023.

Mr. Kraut Congratulations.

Dr. Torres Thank you.

Dr. Torres It's an honor for me to be here in the presence of my colleagues and the public. I'm more humbled in being given the opportunity to have a platform to just represent. By giving me this, you're honoring my mother, my family and my community at large. I'm really humbled. My hairs are standing up. Thank you so much. Thank you. Thank you.

Mr. Kraut Thank you so much.

Mr. Kraut It was a delight that you chose to do it with us. I really appreciated that. I'm sure you did as well.

Mr. Marrero Well, I will tell you that one of the positive outcomes that came out of the Hispanic Heritage Month commemoration, the Commissioner participated as well did Johanne Morne. We decided that what came out of this is we would focus on developing a Hispanic Health Summit for the state for the department.

Mr. Kraut Very good.

Mr. Marrero One of the things that we realized is that it's been three and a half years, if you will, since COVID and there wasn't one. The Hispanic community was the most affected by COVID in New York City in terms of deaths and things of that nature. We lost a lot of people in the industry. We felt that maybe if we did something to sort of rebuild the department, rebuild the industry and look at ways to better the lives and wellness of the Hispanic community throughout the state.

Mr. Kraut Thank you very much. Thank both of you.

Ms. Soto When do you anticipate doing the Latino Health Summit?

Mr. Marrero Well, it's something that we're going to start working on in January. Hopefully, it would all depend, really, because we want to we want to look at the entire state, not just New York City. It's not something that I anticipate will be done by the Fall of next year, but maybe something by 2025.

Mr. Kraut We will come back to the retreat in a moment.

Mr. Kraut Thank you for reminding me obliquely.

Mr. Marrero Just like we tap Dr. Torres, we look forward to working with all of you and tap into your networks and expertise as well to help us as we move forward with this endeavor.

Mr. Kraut Thank you so much.

Mr. Kraut Congratulations again, Dr. Torres. Congratulations.

Mr. Kraut I just want to give you guys a sense. You may have heard earlier I spoke about the disruption in the train service that had prevented a lot of people from the department to join us. They're obviously joining us online or through Zoom for the meeting. The reverse is also true. The trains are disrupted going North. There's a certain timing issue that if you don't get to Croton on Hudson you're stuck there till like 9:00. I'm going to be mindful of the time. I don't want to truncate questions or timing. I just ask that when people do ask questions or make statements, I'd like to move the proceedings along so our staff will be able to get home at a reasonably decent hour this evening. I'll be watching the clock a little. That's all I'll say. I'm not going to put limitations on anyone.

Mr. Kraut With that, it's a pleasure now for me to call on Dr. McDonald, who's going to update the council about the department's activities since our last meeting.

Mr. Kraut Dr. McDonald, Commissioner, welcome.

Dr. McDonald A pleasure to be joining here from the 14th floor at Corning Tower this morning. I look forward to being with you next time you meet here. I'm going to check out five topics really quickly. There's a lot of topics we could talk about. I thought I'd talk about these five in particular. One is the commission of the future of healthcare. We'll talk a little bit about workforce of the state and a bit about COVID, maybe a little bit about RSV, and then touch on cybersecurity. When I'm done, you can ask questions on any or all or something off the board, if you'd like. First, starting in the Commission on the Future of Health Care. On November 2nd, Governor Hochul, Commissioner on the Future of Health Care held their first meeting in the city, fulfilling a commitment made in the Governor's 2023 State of the State address. The health care ecosystem is evolving both in New York and nationally due to a lot of reasons, not least which is an aging population, changing patient preferences, rising costs of prescription drugs, new innovations in technologies, behavioral health crisis and persisting health related social needs. While we face many challenges, these challenges, I think, represent a great opportunity. Given those challenges, thoughtful intervention is required to protect and improve care for all New Yorkers. The goal of the commission is to ensure that the limited resources of the state and other health care payers are optimized to enable the delivery of accessible, equitable, high quality health care for all New Yorkers through a resilient health care ecosystem and a strong health care workforce. The Governor selected some of the foremost practitioners, policy experts in New York and nationally with experience in health care delivery, insurance, long-term care workforce, health equity, innovation and technology and beyond. The Governor has asked the Commission to take a holistic look at New York's health care. Data driven in prioritizing areas for focus and identifying areas where there appears to be the greatest opportunity to improve the resilience of the overall health care market in New York State. The Commission will serve as an independent advisory task force for the Governor with a long-term mandate. The focus is on building a resilient health care enterprise for the long run, not on meeting short term targets. The Commission does look forward to hearing input from the public and health care stakeholders, as well as drawing on their experience and recommendations as they put these recommendations together. I look forward to being involved with you every time as the Commission gets its footing and seeks my input. I want to talk a little bit about workforce. I continue to travel the state. I'm actually a little surprised at how much I'm traveling. I like it. I'm getting out quite a bit. In fact, I'll be in New York tonight. I actually gave a keynote this morning for the health care plan administrators throughout the state. I'll be in the city tomorrow morning giving a keynote at Memorial Sloan Kettering at the Zuckerman Research Center on achieving Health Equity in Cancer tomorrow. I do travel quite a bit. I think traveling is very important. I'm doing a lot of listening. One of things I keep hearing when I go to every hospital system I go to, and I've traveled to all over the state. I'm hearing about workforce. It really is the issue that everybody raises is workforce. The shortages in nursing, physicians and other health care workers, lab workers, diagnostic imaging and just shortages everywhere. A lot of hospitals are doing a lot of novel things to actually address this. I do think one of the things we need to look at as a state, particularly in the next legislative session is how we can look at mitigating this. Some of this might be the licensure compacts. I think the state needs to take a long, hard look at licensure compacts. Forty-one states have looked at the Nurse Licensure Compact. I think we need to look at very closely. When thirty-nine states would look at a physician licensure compact I think we need to look at that as well. One of the things I think we also need to look at when I look at workforces, one of the things I look at how other states approach health care workforce is it's really common for other states that health care workers work at the top of their license. Whereas, in New York I don't think we've really embraced that perhaps as much as we could. I think there's some room in there for some partnership for us to look at in the next legislative session in particular about how we let people work at the top of their license and really help mitigate some of

the workforce crisis that we have in New York. I'm going to shift a little bit to COVID. I think it's fair to say we've achieved detente with the virus. It's still not settled into a seasonal pattern. Hospitalization for COVID have continued to decrease in the last several weeks. Just give a little perspective here. There's about 1,100 people in the hospital at present with a positive COVID test. Last year at this time it was roughly 3,000 and rising. I think, you know, it's interesting right now 1,100. Last year, 3,000 and rising. I think it's clear that right now we're in a different place. I think we've seen the vaccine transition to the commercial market. The new vaccine came out September 15th of this year. Clearly, there were some bumps in the transition to the commercial market. I know there was a lot of issues with billing in the beginning. I was very thankful to our own Office of Health Insurance programs in resolving their own billing issues very quickly with the Medicaid recipients. I think that was handled very nicely by them. I saw the commercial insurers resolve their issues as well rather quickly. Supply of the vaccine was challenging at the beginning. It's getting to be less of a challenge now. I think it's really normalized right now. One of the things that we'll see starting in mid-October, the department has been sending nursing home Dear Administer letters every week, just updating on what we're seeing as far as vaccine uptake in nursing homes. We're obviously concerned about the nursing home population. A vulnerable population to be sure. Trying to see if we can help nursing homes overcome some of the barriers they're having in getting their residents vaccinated. We know nursing homes want to vaccinate the residents. We're trying to be reasonably good partners here and really help with this commercial transition. It's just interesting the way it was rolled out. When you think about how the vaccine was originally rolled out nursing homes were the highest priority as they should have been. This year when you saw the transition in the commercial market they weren't the highest priority. They had to kind of move in with everybody else in the commercial market. what you saw is that they didn't get vaccine the same time that other people in the commercial market did. I think that's affected some of their ability to actually vaccinate their residents. I'm concerned about the uptake of vaccine nursing home residents, our team, Adam Herbst may talk a little bit about this later, our Deputy Commissioner of the Office of Aging Long-Term Care. Our team is doing quite a bit to partner with nursing homes, try to encourage them and help them solve the barriers, whether it's billing, whether it's other issues to really get as many of the nursing home population vaccinated as much as possible. Regarding COVID vaccine for all New Yorkers, you know, quite frankly, not the only one who's just tired of how much the pandemic took from all of us and how many people get sick during a holiday period of time. I'm happy to report that myself, my wife, my kids, Noah, Sarah and Christopher, my mom and Dad all have had their COVID and flu vaccine. I'm kind of hoping to have a nice holiday season. Thanksgiving next week. Hoping to enjoy that without being sick. I encourage all New Yorkers just to kind of think about maybe now is not a bad time to get that COVID and flu vaccine if you haven't done so already. We do have some data on the COVID vaccine. We have a website that shows how COVID vaccines been given in New York. Keep in mind, there's no law that requires anyone's COVID vaccine to report to the state. It tells you on the webpage it's underreported data. It is data, nonetheless. Last Thursday, say about 1.3 million vaccine doses are reported to us. That's a number. I'd like to see it to be higher, of course. I think it's important that people recognize COVID is very much still with us. The best way to keep yourself out of hospital, quite frankly, missing out on life is just get your vaccine. Very thankful the Wadsworth Lab continues to do a nice, robust whole genomic sequencing. We're keeping track of the variants. Right now, we're still dealing with Omicron. It's interesting, in 2023, we've just dealt with Omicron variance, which I think is really quite interesting. I think the vaccine we have should work very well against it. Speaking of making the vaccine accessible, in early October, we got a request from the Pharmaceutical Society of the State New York. They were explaining a problem they're running into that some

independent pharmacies didn't have a standing order to give COVID vaccine like they had during the public health emergency. The Department of Health Immunization team very thankful to have them. Some of them are here. Created a beautiful standing order for me. A non-patient, specific standing order. The Commissioner has the authority to do that. I actually signed the order, and we sent it out to the pharmacy side to the State in New York. Now, really what we're trying to do is respond to emerging threats. It's a health equity issue as well. People go to the pharmacy. Sometimes rural areas of the state cannot acquire a vaccine because lack of a standing order. That's a barrier that we wanted to fix. I think it just underscores that solving health equity issues is often very intentional and needs to be happened here. I think that's a good thing we did. I'm glad we're able to do that. Very thankful to my immunization team for helping us write what I thought was a very thorough non patients traffic standing order. My fourth topic is RSV. I do want to talk a little bit about RSV. Again, I'm very thankful we have the two RSV vaccines for adults greater than 60 with a qualified co-morbidity. Interestingly enough, again, the pharmaceutical reached out to me saying it's a new vaccine. A lot of pharmacies have the vaccine. We just don't have any way of giving it because we don't have a signed standing order. Doctors, I think are so used to telling patients just go to the pharmacy. We'd love to give it. We need the doctor to give an order. It was just sort of this inelegant going on. Again, thank you to my immunization team. They put together a nice signed non patients order for RSV. You think about a vaccine like that is new. You can understand why physicians wouldn't necessarily want to have a standing order. Our team put together, a beautiful order. I was happy to sign it and send it out last month. We updated it a little over a week ago to include people who are pregnant because the Food Drug Administration authorized RSV vaccine for individuals who are pregnant. We added that update as well, sent it out last week as well. Certainly, encouraging all pharmacists to be there for people who are pregnant and give them the vaccine. I think one of things we need to keep in mind is I'm thrilled to have a vaccine for babies. Glad to have that. The supply isn't what we would hope it would have been. I'm very thankful demand was higher than the manufacturer expected. In some ways, I'm a little bit surprised the manufacturers didn't see this coming because I think its clear people don't want their babies to have RSV. I expect the supply of the 50 milligrams dose to grow quicker than the 100 milligrams dose. The babies under 11 pounds would get a 50 milligrams dose should be in better shape sooner. We're seeing RSV now. The supply of vaccine we have just isn't quite what we need. I think this underscores the importance of why that maternal vaccine for people having who are pregnant available is just another way that people who are pregnant can protect themselves and their baby. It's just thrilling for me to be a patrician of thirty-three and a half years to actually be able to prevent the disease that we had no treatment for and still don't. Very thankful where science and technology is bringing us. I think that's a plus and just speaks for where science and public health are growing. Last topic I want to talk to you about quickly is cybersecurity. If you're in a hospital, I think cybersecurity is top of mind for everybody. It's just the world we live in right now. It's not if a hospital cyber-attacks. It's when. It happens daily for most hospitals. It's really interesting that that happened. I was very thankful to say we rolled out a draft of regulations for cybersecurity. We're looking for public comment. I really value public comment on every regulation. I think it's really important that the public weigh in. I found that the public do make our regulations better. Very thankful we're doing that. It's very thankful the Governor earmarked half a billion dollars. That's \$500,000,000 for hospitals of all sizes to help implement these regulations. I think it's clear some of the larger hospitals have really robust systems in place. Smaller hospitals are as well resourced. It's just nice that the funding is available for them to do that. I'm glad we had this time together. I want to stop right there. I do look forward to being with you in person in February.

Dr. McDonald What questions can I answer for anybody right now?

Mr. Kraut Thank you, Commissioner.

Mr. Kraut Dr. Rukke.

Dr. Rukke Dr. McDonald, thank you very much.

Dr. Rukke John Rukke. As you now, for the first time in years, PHHPC planning is underway looking at oral health and mental health as a way of diverting unnecessary care in the E.R. to other more appropriate settings. Thanks for your support. The question is whether you would have any suggestions or any support and how to enlist the new Commission on the Future of Health as collaborators, or at least being informed of those activities.

Dr. McDonald I think one, on the Commission of Future Health Care, I definitely want to share with them the information we have. I think you're right to highlight oral health and mental health as two issues that are important. We're a state of 600 million teeth. That is a lot of teeth to keep track of. We're just not meeting the need with the workforce we have. I think there's things we can do, quite frankly, short term in next legislative session. I think we should look at dental hygienist, quite frankly. Other states have looked at in some settings giving dental hygienist independent practice. I think it's an interesting idea. I think we need to look at that. I think other states have looked at dental therapist. That would take a fair amount of time to put together. I think it's something we need to look at. I think we need to look at community things that we're looking at too, like water fluoridation. I think we need to look at our diet, quite frankly, as a state. Population health things that we need to be doing. We're a state that just we love our sugar. Your teeth don't really love sugar. We have to own some of this. What can you do? When it comes to behavior health issues, you know, we have some real workforce challenges in psychiatry and mental health. I think if we're going to continue to have these licensure contracts, the compacts that other states have done. We're not helping ourselves. I think the future of Health Care Commission, which is what you asked will know about these things. I'm certainly available to them. I know the Governor's health team knows about these issues as well. We talk daily. I'm sure they'll have these issues in front of them. Some of this stuff we can solve ourselves, quite frankly, in the next legislative session. I think that's really important that we look at what do we have in front of us, because I think we have some short-term solutions that would really help us in the short term. I don't think we need to wait for recommendations at some of things that we know what to do.

Dr. Rukke Thank you.

Mr. Kraut Several of the members have asked me to kind of ask a question. It comes from a previous application that we saw here. We all read in the paper about an application coming or may have been received by the department for the closure of Beth Israel Hospital and recognizing we took a matter up on Beth Israel and New York Eye and Ear and we couldn't come to closure and that is also before you as well. Also knowing that that application doesn't come to PHHPC, the closure applications. It's actively in front of you. The question was framed about not so much what your thinking is, obviously because it's before you and you can't comment on that. What's the process that the department goes through to evaluate those type of proposals?

Dr. McDonald Thank you, Jeff.

Dr. McDonald Let's talk about it because I think the process is something that everybody should understand. Quite frankly, you know, one of the things about process for so much of what the Public Health Council does depends on what actually is happening, whether it's construction, the establishment, closure and the process is different. It may be worthwhile putting this in writing for folks so it's simple. Why don't we do this? Why don't I have two of my team members actually explain this thoroughly. Shelly Glock talks a little bit about their certificate of need issues there. Why don't I have Dr. Morley talk about the closure process. I don't really want to talk about any specific closure in particular here because these matters do come to me eventually. Shelly, I think you're probably on the call. You mind if I put you on the spot a little bit? I haven't talked to you ahead of time. If you're not there you're probably surprised I'm doing this. You're flexible. What do you got for me, Shelly?

Ms. Glock Thank you.

Mr. Kraut I'm going to tell the group that I don't want to prolong because of what I said. If there's a process issue not related to an application, I'd love to go more into an educational session on process and maybe exec session or something where we could talk through process, not specific to an application. You have clarity about those issues as well because that might be beneficial maybe in February to do that. I don't think because of the distance we should go into exec session and try to do it through Zoom.

Ms. Soto I think that would also be helpful if we knew that the department's process.

Mr. Kraut Shelly, I'm just asking and pleading with you to give a brief an answer to the question, and then we can do a more extended, structured way, asking Ms. Marks and Martha to help us go through that in more detail.

Ms. Glock Thank you.

Ms. Glock In terms of the Mount Sinai closure. Closure of a hospital, as we previously discussed is that a closure plan is submitted to the department. The department will review that. That does not come to PHHPC, right? There's no CON application involved with a full closure of a hospital. I think that something that folks have asked about is there was a CON before you which had to do with New York Eye and Ear becoming a a division of Mount Sinai Beth Israel. That application did receive a positive approval and it's got contingencies and conditions on it. That application remains at this point. They're not able to move forward on that application because the contingencies on that project that were placed have not been met. That remains an active CON that did come before the council. It remains as an active application until the contingencies are satisfied, which would allow Mount Sinai to move forward of making that a division. I don't know if I've answered your specific questions, but that was the CON that you took action on. It remains under review, with contingencies yet to be satisfied and a full closure will not be a CON an application.

Mr. Kraut Again, just go ahead and then but I'd love to get into it in a more of an educational system.

Mr. Kraut Dr. Berliner.

Dr. Berliner I'm not sure if this is for you, Shelly, or for the Commissioner in regard to this. As I understood the Commissioner's response about New York Eye and Ear, he was

waiting for Mount Sinai to fulfill certain conditions quite a few of them. As I read the proposed closure statement by Mount Sinai it said there would be no change to the status of New York Eye and Ear, which to me was a little disingenuous because if the Commissioner---

Mr. Kraut It wasn't a closure application.

Dr. Berliner the Commissioner agrees to the absorption of New York Eye and Ear New York by Beth Israel and then Beth Israel closes. There is no more New York Eye and Ear if I'm understanding that correctly. My question is really, will the New York Eye and Ear CON be decided before the Beth Israel closure?

Ms. Glock The New York Eye and Ear application cannot close without the contingency satisfied. I'll just make a clarifying statement without getting too legal because I'll defer to my legal colleagues. Right now, the Mt. Sinai Beth Israel, the operator is Beth Israel Medical Center Inc. That legal entity could remain as a legal entity. The Rivington Behavioral Health is underneath that legal entity as well as Mt. Sinai Brooklyn. If Beth Israel were to close, but the legal entity remained New York Eye and Ear could become a division of that legal entity that will survive and then the volumes of those hospitals in CMS's viewpoint would be combined. That would allow New York Eye and Ear to remain as an acute care hospital.

Mr. Kraut I just want to let you know something. We cannot have any specific questions about an application that may come back to us. Dr. Lim is in the room. We got to keep it at a level. I've not asked her to leave the room. I won't ask her to leave the room. You cannot ask specific issues about an application that can come back to us. We need to consider in the context the facts. That's all I will ask.

Mr. Kraut Ms. Monroe and then Dr. Strange and then I'd like Mr. La Rue.

Ms. Monroe Shelly, when we see a comment, the public has the right to come to our meetings and make their case either for or against the CON that is being considered. In a closure plan what is the department's process for the public to have the same opportunities to speak for or against the plan that they have when they come here on a specific CON?

Ms. Glock I cannot comment on the closure plan process. It doesn't sit within the CON process. It's a separate process. I'm going to defer back to my colleagues in Albany to address the closure plan process and the community engagement piece.

Mr. Kraut There is a requirement based on the most recent letter that outlines closure that requires community input. Dr. Morley maybe can answer that or somebody in Albany.

Dr. Morley Thank you very much, Jeff. You're absolutely right. I don't have too much to add to that. We have received the closure plan from the institution. It is under review. It's an extensive plan, well over a hundred pages. The detail that you identified was sent out in August. It tells hospitals that when they send us a plan they need to be able to provide information in that plan as to who is being impacted, what are the options that they've reviewed, the community information that has been provided to the community meetings with them. It's more than one. We're looking for them to be meeting with the community directly and the leadership of the community both. The institutions that we're talking about are in the process of setting that up. They're several months away from the potential

closure. Having said that, it was pointed out by Mr. Kraut earlier in another discussion and another issue that things change. As we make changes, the community and things around us changed. The staff of the institution are aware of what's happening. This is very much a in progress in process events that's going to be going on for months. We'll have a plan. They'll have a plan. We have to be careful that we don't think that there are any guarantees with any of the things as we go forward, because things change, and the community changes and the staff have their rights changes as well. We're working with the institution. We're reviewing their plan. They are making changes to communication with the community. They're going to continue to do that as they go forward and keeping them informed.

Ms. Monroe Does the public and the constituencies have an opportunity to speak directly to the department about this decision? Do you look to whatever the institution's presentation of the public response? We see them, they come here. We hear them. Will the department have that as part of their process?

Dr. Morley We do hear from them. We have been hearing from them. They do write to us. They do emails with us. We do not have anything at this time calendar for an open face to face meeting. We're hearing from significant numbers of people in the community who are sending us their communications through the US mail and through email.

Mr. Kraut Dr. Morley, you may not be aware yet, but they have announced a public forum that's being held in Baruch later in this month. They are widely publicizing it. Again, I don't want to prejudice the review. I hope we've answered the questions about process. We'll go back into a process. The process questions I'd rather do outside of our normal agenda.

Mr. Kraut Dr. Strange.

Dr. Strange I'm going to talk about immunizations again.

Mr. Kraut Okay.

Dr. Strange As a practicing physician still seeing a lot of geriatric patients, part of the concern that you brought up about sending people to pharmacies to get their immunizations. We would love to take on as practicing physicians, as pediatricians do. Some of that has to do with reimbursement and how you get some of these new immunizations into offices and get properly reimbursed for. That's why a lot of physicians just don't do it. Shingles is an example. RSV is now that same example. Any thought a way of maybe figuring out a way to streamline this better so that adult medicine physicians, especially geriatricians, can make it easier for us to do this?

Dr. McDonald I love the question. Quite frankly, I think you're right. Years and years ago before pharmacies gave vaccines we were the ones who get vaccines. Quite frankly, we generally didn't make money. We just did it. I think more and more what you're finding is that giving a vaccine requires time, commitment and there's a lot of steps to it. You need to get adequate reimbursement. You actually do pretty well in a COVID vaccine, right? You have \$40.00 for administering a dose, but that's not like any of the other vaccines we give. It's worth looking at. I mean, I think we have to look at what our rates are for reimbursing for vaccines. I think it helps if manufacturers give credits for unused doses. I know Pfizer's doing that for unused doses for their COVID vaccine. That's not true for every manufacturer. These are some of the issues that I think we need to work out. If you're at a doctor's office there's so much overhead you can absorb. The margins are pretty thin in

doctor's offices these days. You really just don't have the room that's there. I think part of why pediatricians do vaccines in office is because you do a lot of them. You get really good at it. I would love to see doctor's offices more and more be able to give vaccines. I think part of it, because you've got the patients right there. It'd be great to have that moment. Just be one where it's finished right with the vaccine. Let me take it back for my team a little bit and see if we can do if we can be helpful with that just on the immunization side but also the payments side and see how we can be helpful there.

Dr. Strange In the geriatric world that's covered under Part D. That's part of the problem because it falls in the doughnut hole. It's not the physicians want to make money on the vaccine. I mean, we'd break even. We just don't get reimbursed for a lot of this. It just goes to waste. It's the Part D.

Mr. Kraut Dr. Kalkut, Mr. La Rue, Dr. Bennett.

Dr. Kalkut Are we considering an educational session in the next cycle with the department?

Mr. Kraut I will set that up after the full council meeting in February.

Dr. Kalkut in February?

Mr. Kraut Yeah.

Dr. Kalkut Thank you.

Mr. Kraut Yes, Mr. La Rue, Dr. Bennett, Dr. Boufford.

Mr. La Rue Good morning. Dr. Scott La Rue, member of the council. First, I'd like to compliment the department on the work that they're doing with the Master Plan for Aging. I'm not sure I've ever been involved in an effort that is so integrated and has set broad tentacles that it's connecting with everyone with even a remote interest in aging. One of the questions that has come up is how this is going to be aligned with this new health commission and the work of the Master Plan for Aging, how that would be integrated within the work of that separate commission. If you're not prepared to answer that today, I just want to put it on the table as something that is being brought to my attention that people are looking for information on. Thank you.

Dr. McDonald One of things I want to make really clear to people is the Future Health Care Commission has had one meeting. They just started. They're independent. They're going to be looking at a lot of things. They're sort of a long-term advisory commission to the Governor. They're obviously working in the same state we are. I want to make sure Adam knows I really appreciate all the work he's doing on the mass collaboration because he has been literally everywhere on this.

Mr. Herbst Thank you, Commissioner.

Mr. Herbst Scott, it's a good question. I do want to respond to that because I've been receiving that question quite a bit since the commission was announced last week. We spoke to the Governor's Office about this as well. The Master Plan for Aging remains a top priority for the Governor and is our primary tool for building a holistic and coherent approach to aging across the state. The commission's mandate is different from the

Master Plan for Aging. The commission's mandate is broader. The commission will focus on the full continuum of care, including hospitals, primary care, behavioral health and much more. The commission is likely to spend some time on long term care given the importance of the health care system and what long term care plays within the system. This is certainly not the only priority of the commission. The commission will not go as broadly or deeply into the topic of long-term care as the Master Plan for Aging. Given that the commission is launching after the Master Plan for Aging has been running for some time, as you and many people on this body knows, the commission will look forward to reviewing recommendations from the Master Plan for Aging and potentially building on those recommendations and thinking about how to connect them to the broader health care ecosystem. I encourage people to go to the website the Governor's Office has put out. It's on the DOH website. It's on the Governor's website. It announced the official launch of the commission, which was launched on November 2nd. If you Google that, you'll find the announcement of the launch of the commission. It'll describe there on that landing page what the commission's priorities are. If you'd like to research the master plan, I encourage you go to master plan. That will also talk about our priorities. There is overlapping priorities. Again, the commission will have a different mandate, which is, like I said, a little bit more broadly defined in terms of the health care system across New York. We'll look at our work on the master plan as one of the many pillars of it.

Mr. Kraut Dr. Bennett and then Dr. Boufford.

Dr. Bennett Thank you.

Dr. Bennett Just two quick things. As Dr. Strange mentioned, the office vaccines in a physician's office. That's a Medicare issue. It's a payment issue. We struggle with that as a health plan and as a provider. That's going to be a hard not to solve because the vaccines are in the Part D benefit. The other thing I just want to take the opportunity, Commissioner, thank you for mentioning the dental problem. It's a real issue in the Capital Region. Our members, particularly our Medicaid members cannot get adequate dental care. I've been in dialogue with some of the agencies who might be able to help the issue if we could have some reforms of the scope of practice laws in dentistry, which I know is a Department of Education issue. There are other states which allow these dental technicians to do some more dental functions. This is a real problem with access for members, certainly in the Capital Region for dental access. I appreciate that you mentioned that. Anything we can do to help inform that journey happy to do.

Mr. Kraut Thank you.

Mr. Kraut Commissioner, I'd like to thank you.

Dr. McDonald I have had a couple of conversations with State Education Department. Because I think one of the things that people need to know is we get along with the State Education Department. We have regular meetings with them. We're getting things done together. I'm optimistic about the future of the Department Health working with the State Education Department. I think people should just know that the State Education Department's been a really valuable partner. They're doing things with us. I'm happy with what they're doing with us. I think it's good news.

Mr. Kraut Last question, Dr. Soffel.

Dr. Soffel Hi. Two quick questions. One, can you make any comments on the status of the Medicaid 1115 waiver amendment? Second question is, I know in last year's budget DOH got a significant amount of money to re staff the department. I was wondering if you could speak to how those efforts are going, because I know that there's been some concern about the drain of staff from the department.

Dr. McDonald Thank you for that.

Dr. McDonald First thing is the 1115 waiver. You know, I actually thought it was going to be approved by now, but it just hasn't been yet. There's so much money involved. It's taking a little longer than expected. What I can tell you is soon isn't the time. Quite frankly, I'm hoping it gets approved in the next few weeks because we just keep talking about it around here like it's coming soon. I can't be more specific. Lord knows I want to be. As far as the department staffing goes we are doing a lot better at recruiting and retaining staff. I'll give you some numbers here. In 2022, we have 1,700 staff in the New York State Department of Health, which, by the way, that's a lot of people to hire. 850 of those were new people coming into our department. 850 were internal promotion. That's great as well. At the end of 2022, we had looked at notice we lost 850 people. When you looked at that, I started 2022 and ended 2022 with the same amount of people. That wasn't awesome. In 2023, we are actually adding people. Every two weeks I get a report that shows me how we're adding staff. Every two weeks I see us improving not just with our New York State Department of Health State staff but our Health Research Inc staff. We are seeing nice improvements now. We're positive. Last I checked, we're positive 300 for 2023 with state staff. It was a similar amount with Health Research Incorporated. I really do feel like we're recruiting experts, we're hiring new people. One of the things that's fun for me is I go to all of our sites. I haven't been to all thirty-eight yet. I've been to fifteen of them. Yesterday I was at 875 Central Avenue meeting with my Office of Aging and Long-term Care staff. I was great to meet the surveyors who've been there four days, others who had been there two weeks. Like I'm seeing new employees, which makes me happy. Very thankful to our team by the way, on the administrative side, our human resources people led by Deputy Commissioner doing a great job of just hiring people, attracting people. We're doing what we can to retain people too. One of the best strategies for recruitment is just, quite frankly, not losing people.

Mr. Kraut Thank you very much.

Mr. Kraut Thank you, Commissioner. We'll look forward for an update about the Medicaid waiver when the T's and I's are crossed and dotted. Hopefully, we'll hear that at our next meeting in February.

Mr. Kraut We've received the written reports from the deputy commissioners. I hope you had an opportunity to read them. I'm going to give them each a few minutes just to focus on some of the highlights of that to bring to our attention. It's not necessary to read what you provided us in written form.

Mr. Kraut Mr. Herbst, I'll ask you to start with the activities of the Office of Aging and Long-Term Care. I know you already answered one of the questions that we were asking about the commission activities to the Master Plan on Aging.

Mr. Herbst Thank you, Mr. Kraut.

Mr. Herbst Before I begin, I also want to congratulate Mr. Torres on his wonderful achievement on behalf of what you do in our industry. We really appreciate it. Congratulations. Mr. Kraut and the PHHPC body, what we're doing in the Office of Aging and long-term Care right now is we are spending a considerable amount of time looking at policies and the intricate landscape of long-term care in the macro sense. We see that our mission has aligned with a lot of the priorities that were put into the package here in terms of our commitment to fostering a system in our state that ensures dignity and independence and quality of care for our aging population. That is something that remains that we are unwavering, committed to. I know the Commissioner and the Governor's Office, the Governor herself are committed to this mission and vision that we have in the Office of Aging and long-Term Care. As you see in our report, we are focused quite a bit on hospice regulations. I do want to flag, as you see in the report, that New York State exhibits the lowest utilization of hospice services nationwide. Recognizing this, we are working very hard at the moment to promote the appropriate use of hospice care in the state of New York. We hear from advocates, we hear from the industry, and we hear from caregivers and loved ones. To that end, we have been crafting new regulations to engage in our conversation with this body and also stakeholders. Our intention is to hopefully put together a package in early 2024 for a simplified, efficient set of regulations that will help the public with hospice care and a new methodology there. Same thing with respect to our work on certified home health agencies, our nursing home methodology. We are working right now very hard to look at the process, drafting regulations and updating these recommendations that will present at this body. We hope in the next cycle that will offer an opportunity for New York State to become and remain a leader in home health agencies and nursing homes. I do want to spend a second just talking about the program for all-inclusive care for the elderly that's known as PACE. Two years ago, the former Medicaid Director, Brett Freeman, came here and presented to this body. I presented at this body on PACE. Just to remind everybody, PACE is a federally recognized model of comprehensive care for people over the age of 55 who qualify for nursing home levels of care and who wish to remain in their community. The current Medicaid Director, Amir Bishara and I are committed to this PACE program, ensuring that those included for the Medicaid and Medicare covered benefits have the right type of services. And as of now, we are looking for the enactment of a new Article 29 PACE licensure statute. We are working very hard to develop the necessary PACE licensure regulations. We're very excited about this. We hope to bring this information to this body with respect to the new statute and regulations in the first quarter of 2024. I want to flag just two other things really quick. The Nursing Home Safe Staffing Program, I know the industry has been eager to hear more about where we are with respect to this. The Commissioner mentioned this, The Department of Health, the Governor's Office strongly supports minimum staffing requirements for nursing homes and long-term care facilities to ensure residents safety and well-being. The state has enacted its own minimum staffing standards for nursing homes under state Public Health Law Section 2895B. We have been doing a lot of education at the Department of Health with the administrator letters, with webinars and educational informational training and education to ensure that the industry is prepared for any questions that may come up with respect to the Nursing Home Safe Staffing Program. We work with the industry, and we encourage the industry to reach out to the department if they have questions. We're providing more education and training. We really want to ensure that the industry is aware of where the department is on this and how our opinion continues to be with respect to ensuring resident safety and well-being in nursing homes. Real quick, the Governor excuse me, the Commissioner mentioned COVID vaccine. I do want to mention just two things there. I want to reiterate the message that we are dedicated to pushing out. We remind all nursing homes to have their residents and their staff get the updated vaccine. We have been working very hard with the nursing home industry and all industries to help

push the COVID vaccine. What we have done for the nursing homes providers is we have changed the methodology, the information that gives us the collection of data. We have revised that. We have shortened the Daily Herd survey. This way we are working with the industry. Again, pushing the important message that nursing homes should tell their residents and their staff to get the updated vaccine. One other flag that the department continues to work on our hospital at home, work in expanding our settings for the hospital home. I know many people on this body are very interested in that. We look forward to coming forward in the next cycle, the next meeting to give updates with respect to where we are with this. This is something that the Governor's Office is committed to as well. We talked about the Master Plan for Aging. We continue to work on this multisectoral initiative that's aimed to ensure all New Yorkers can age in the State of New York with independence and a dignity in their own settings for as long as possible. We issued a preliminary report in August. We are now working on an interim report that will be issued to the Governor and released to the public hopefully in early 2024. Many people on this body are integral in the work that we're doing. We really appreciate the partnership with the PHHPC body and encourage the cross collaboration with all of your expertise to helping the master plan become successful in allowing New York to continue to be a leader in aging and long-term care.

Mr. Herbst With that, I'll turn it back to you, Mr. Kraut.

Mr. Kraut Thank you very much, Mr. Herbst.

Mr. Kraut Any questions?

Mr. Kraut Mr. La Rue.

Mr. La Rue Good morning. Just a quick question on the transformation grant. Has there been an indication on the timing? Has there been any established priorities or a global set of goals that is most important to the department as it relates to these potential grants? Thank you.

Mr. Herbst Thank you, Mr. La Rue.

Mr. Herbst We are still working on the timing. I'm not able to give a definitive date on that just yet. I am something that we are working very hard on. It's something that the Governor's Office, the Department of Budget and the department are collaborating on to hopefully push out as soon as possible. As you just alluded to, many priorities with respect to these grants. Nursing homes, long term care is a significant priority. It's something that we are continuing to ensure will remain so. We look forward to providing updates on the timing of those grants, hopefully in the next cycle.

Mr. Kraut Boufford.

Dr. Boufford Hi, Commissioner. I wanted to ask, first of all, I want to congratulate you on managing a complex and far-flung process. I wanted to highlight really the conversation that's ongoing in the master plan. I think it's quite relevant to the commission and potentially to other activities in the state, which is the role of prevention. I think what we're trying to do, carve out with colleagues and as part of, and you've invited us to do this as part of the master plan is a really a look at prevention; primary, secondary, tertiary prevention for older people not going back to the cradle. How do we start at 40, 50, 60 to kind of avoid some of the incredible expenses that the state health care system currently

incurs? Similarly, I want to just emphasize that because I think in the initial report there was a lot of discussion of it. There was mention of it. I think we've been trying to frame it as something other than saving health care costs. It has a value in its own right. Politically, it's very hard to do that, obviously, in the state and now the commission. I'm trying to get a sense of the role of introducing something other than reform in the current system, structure or services patterns into the thinking going forward, relevant to things like regulations, like reimbursement and others. It seems really, really challenging to do that. I just want to put it on the table for everyone. I'm not going to even say the words prevention agenda because we're still working on that otherwise. A lot of the real emphasis here, the policy leadership is on the health care delivery side. How do we get those ideas into the conversation in time to have them even considered?

Mr. Herbst Well, I want to thank you because you have been pushing the Master Plan for aging with respect to this idea. That's what makes New York an outlier. Many states have created a Master Plan for Aging and a commission or a body very similar to what we're doing here in New York. We are the outlier with what you're pushing. We appreciate that. I would like to call attention to that. You're flagging for this and your dedication to the idea of this and incorporating it into the work we're doing for the aging plan will make New York, I think, very unique and very successful in how we're going to create this. I want to be thoughtful in how I respond to your question, because it's a very important question. I think it requires a very thoughtful, dedicated response. I think we're meeting actually next week to discuss this. For purposes of this conversation, I'll just say that we are joining you in your dedicated efforts to ensure that this is incorporated into the Master Plan for Aging. Again, it will be something that we are putting as a top priority. As you see, it's a pillar as you know on what we're doing here. I look forward to collaborating and partnering with you on this.

Mr. Kraut Thank you very much.

Mr. Kraut I'm going to call an audible here. I'm going to change the agenda. As you know, it's been challenging for us to get a quorum. We have a number of vacancies. We have a number of appointments pending. We've not been able to have those acted upon. We have some time considerations of some of our members who cannot stay beyond a certain time. My fear is I will lose a quorum and will have to close the meeting without being able to vote. What I'm going to do is I'm going to start with...I'm going to change the order structure. I'm going to do Establishment, I'm going to do Codes Committees, then I'm going to come back for the deputy commissioner reports and the reports of Dr. Boufford and Dr. Ruge. Dr. Bauer, Mr. Morley, I apologize. Dr. Morley, I apologize. If you can't stay for that I will understand. We do have your written reports. I hope you could. I'm just fearful that I'm going to lose a quorum and the meeting will be over.

Mr. Kraut With that, I'm going to turn it over to Mr. Robinson to call the Establishment and Project Review Committee.

Mr. Kraut Thank you.

Mr. Robinson Mr. Kraut, we had a special meeting of the Establishment Committee and brought two applications forward for action. I want to report those first. Application 231325C, NYU Langone Hospital in Nassau County, noting a conflict and recusal by Dr. Kalkut and an interest by Dr. Lim. This is to certify a new hospital extension clinic at 21

210 Crossways Park Drive in Woodbury and perform renovations to create an ambulatory radiation oncology center. Application 231103C, NYU Langone, Brooklyn Kings County. Also, a conflict and recusal by Dr. Kalkut and an interest by Dr. Lim to certify adult cardiac surgery services. Application 231108C, NYU Langone Hospital, Nassau County. Again, a conflict and recusal by Dr. Kalkut and an interest by Dr. Lim. This is to certify a new extension clinic at 101 Mineola Boulevard in Mineola. The department is recommending approval with conditions and contingencies in each case. These also have a similar recommendation from the committee. I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second, please?

Mr. Kraut A second, Dr. Torres.

Mr. Kraut Is there any questions or comments from the council members?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson I misspoke. One of these applications was in our special, the other was in the regular committee. The second application that was in our special committee meeting is 231288E, Our Lady of Lourdes Memorial Hospital in Broome County to establish the Guthrie Clinic as the active parent and cooperator of Our Lady of Lourdes Memorial Hospital. The department and the committee recommend approval with a condition. I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Watkins.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. La Rue And for the record, I abstained.

Mr. Kraut I'm sorry. Mr. La Rue has abstained, but we still have more than fourteen affirmative votes, and the motion will pass.

Mr. Robinson I apologize if some of these are not in the order that you're seeing in the agenda. I'm trying to make sure that they're batched in a way that we can work at them. I do want to make special note of the fact that application 231044E, Sunset SNF Operations LLC doing business as Sunset Lake Care Center for Rehabilitation Nursing in Sullivan County has been deferred at the department's request that item was covered at some length with a lot of public comment at the committee meeting. This deferral makes a lot of sense because I do think that there's still work to be done here. Nonetheless, I want to ask the department to be proactive in working with the community, the county and the applicant to bring some resolution to this as quickly as possible. The concern here is, of course, that we don't want this facility to close and people in that community not to have access to that service. Again, I think this is ball in the department's court here to move forward proactively and drive a solution that's going to be workable for the community. Continuing on, and I'm batching once again. These are applications for approval that have not had issues, recusals, abstentions and interests. 192204E, Island Nursing Home Inc doing business as North Country Nursing and Rehabilitation in St. Lawrence County. This is to transfer 100% ownership interest to nine new shareholders. The department and the committee recommend approval with conditions and contingencies. Application 231011E, Fairport SNF LLC doing business as Fairport Skilled Nursing and Rehab in Monroe County, establishing Fairport SNF LLC as a new operator of a 142-bed residential health care facility currently operated by the Fairport Baptist Home at 4646 9 Mile Point Road in Fairport and changed its name to We Care at Fairport Nursing and Rehabilitation. Department and committee recommend approval with condition and contingencies. 231259E, Tupper Lake Center LLC doing business as Tupper Lake Center for Nursing and Rehabilitation in Franklin County, establishing Tupper Lake Center LLC as the new operator of Mercy Living Center, a 60-bed residential health care facility currently operated by Adirondack Medical Center at 114 Wawbeek Avenue in Tupper Lake. Department recommends approval with a condition and contingencies, as did the committee. Application 231010E, Villas Home Care LLC, service areas in Clinton, Essex and Franklin County, establishing a new licensed Home Care Services Agency at 61 Beekman Street in Plattsburgh. Department and committee recommending approval. Application 222238E, Auburn Assisted Living LLC with a service area of Cayuga County establishing Auburn Assisted Living LLC as the new operator of a licensed home care services agency currently operated by Northbrook Heights Home for Adults Inc at 170 Murray Street Extension in Auburn with the department and committee recommending approval with conditions and contingencies. Application 222220E, Kris Agency and Home Care Inc, service areas; Bronx, Kings, Nassau, New York and Queens County. Transfer 90.1% ownership interest from one current shareholder to an existing shareholder. Department is recommending approval with a contingency, as did the committee. Application 222255E, Riverside Select Services LLC doing business as Cottage Home Care Services Inc with a broad service here in the Metropolitan area. Established Riverside Select Services LLC is the new operator of a licensed home care services agency currently operated by Cottage Home Care Services Inc. Department recommends approval, as did the committee. I make a motion for that batch.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Second, Dr. Berliner.

Mr. Kraut Are there any questions on any of those applicants?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson Dr. Lim, this involves a recusal by you.

Mr. Robinson Calling application 231369E, West Side ASL LLC doing business as West Side Ambulatory Surgery Center. Dr. Lim declared a conflict and has recused. Establish a new multi-specialty ambulatory surgery center to be shared with Hudson Specialty Surgery Center in a temporarily excuse me distinct arrangement at 450 West 31st Street in New York. Department and committee recommend approval with conditions and contingency with an expiration of the operating certificate five years from the date of issuance. I so move.

Mr. Kraut I have a motion.

Mr. Kraut May have a second?

Mr. Kraut Dr. Berliner.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson Thanks.

Mr. Robinson Please have Dr. Lim return.

Mr. Robinson Application 231380B, Mohawk Valley Surgery Center in Oneida County. Establish and construct a multi-specialty ambulatory surgery center at 601 State Street in Utica. Department and committee recommend approval with conditions and contingencies. Application 221277E, Medicare LLC Kings County transferring 100% ownership interest from the current sole and withdrawing member to a new member LLC with recommendations for approval from both the department and the committee. Those are with conditions. I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Bennett.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed.

Mr. Kraut The motion carries.

Mr. Robinson These are actions for certificates, starting with a restated certificate of incorporation for Rochester General Hospital Association Inc in Monroe County. Mr. Thomas declared an interest, but he's not here. The foundation for certificates of incorporation for the Foundation for Catholic Health in Erie County. The certificate of assumed name for VJJ Holding Company LLC in Suffolk County. Certificate of Dissolution for DOJ Dialysis, Center Corp and for Wartburg Nursing Home Inc and for Greater Harlem Nursing Rehabilitation Center Inc. In each of these approvals is recommended by the department and the committee. I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Berliner.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson That concludes the report of the establishment of Project Review Committee.

Mr. Robinson Back to you, Mr. Kraut.

Mr. Kraut Thank you very much.

Mr. Kraut I am going to now essentially call the report of the Codes Committee. Good afternoon. At the November 16th, 2023, meeting of the Committee on Codes, Regulation and Legislation the committee reviewed and voted to recommend adoption of the following recommendations for approval before the full council. Trauma Center Resources for Optimal Care of the Injured Patient. The department presented the Trauma Centers

resources for Optimal Care of the Injured Patient proposed regulation to the committee. They're available to the council should there be any council members. I make a motion to accept this regulation for emergency adoption.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Watkins.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut The next one is for adoption also at the meeting of November 16th. We consider the Communicable Diseases Reporting and Control adding respiratory syncytial virus, RSVP and varicella. Dr. Lutterloh and Ms. Kazmi from the department presented this regulation to the committee. The committee recommended approval. I move to accept the regulation for adoption.

Mr. Kraut I have a second by Dr. Watkins.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Kraut There were three regulations that were considered for information only. The first one was the hospital and nursing home personnel, protective equipment, PPE requirements that was presented to the committee for information only. It will be considered by the full Public Health and Health Planning Council at adoption at a later date. The second was on hospital cybersecurity requirements that was presented to the committee that will also come back to the council for adoption at a later date. The third was the adult day health care regulation that was presented to the committee for information only and will be presented again to the full council for adoption at a later date.

Mr. Kraut I don't know if anybody has questions on any of those regulations that you read, but we will have an opportunity to review them again.

Mr. Kraut Yes, Mr. Lawrence.

Mr. Lawrence I think it was noted that when the cybersecurity regulation comes back, that it will come back with some projection around when the other issues within the health delivery system will be included.

Mr. Kraut Yes.

Mr. Kraut Just to clarify for individuals who weren't there, Mr. Lawrence raised the issue that cybersecurity regulation is focused right now on hospitals, Article 28. Doesn't apply to DNTCs, Ambulatory Surgery, Dialysis Centers, Community Health Centers, FQHC. Mr. Lawrence asked the question when would those part of the health system? The department said they'll come back with a timetable for the rest of the delivery system as well. That was for information.

Mr. Kraut This completes the agenda of the Codes, Regulations and Legislation Committee.

Mr. Kraut I'd like to return back to our regularly scheduled program and if Dr. Bauer is available to give her summary report on the activities of the Office of Public Health. Again, I apologize for the audible, but it was unavoidable.

Mr. Kraut Dr. Bauer, if you're available.

Dr. Bauer Thank you very much.

Mr. Kraut Thank you.

Dr. Bauer I appreciate your time. I will be very brief. I'll call out some highlights from our activities in the Office of Public Health and more details, of course, are in the full report. I'll start with the Wadsworth Center Public Health Laboratory and their work across the state and the Northeast, as well as nationally in terms of sharing their expertise. I'll just call out the CDC's proposed One Health Agenda and the Wadsworth comments on that new framework. We certainly endorse that framework. We noted that substantial and sustained federal investment, particularly around vector surveillance and surveys of wildlife and livestock, will be needed, along with increased emphasis on investigating and communicating the relationship between environmental changes and zoonoses. Also, the framework really focuses on collaboration across federal agencies. We noted the importance of bringing states into that and establishing some pilot programs at the state level to implement a comprehensive One Health Surveillance Program to get ahead of some of these crises that may be emerging as opposed to detecting and reacting at a later date. I'll call out our Center for Environmental Health and the work that they are doing to advance several initiatives involving legislative or regulatory changes that will better safeguard New York State residents from contaminants in their water, homes and environment. For example, CEH is administering federal funding from the bipartisan infrastructure law that enhances the existing Drinking Water State Revolving Loan Fund to support replacement of lead service lines, the removal of emerging contaminants from drinking water, and the upgrading of aging and inadequate water supply infrastructure. The final intended use plan for the Drinking Water State Revolving Fund projects to upgrade infrastructure and address emerging contaminants that is posted on the DOH website. Applicants for lead service line funding are still being scored and processed. The draft intended use plan for these projects should be announced by early 2024. I'll just mention quickly our work addressing lead in school drinking water. Revisions to Public Health Law 1110 lowered the action level for lead in school drinking water from 15 parts per billion to 5

parts per billion, and then increased the frequency of lead testing from every five years down to every three years, effective at the end of 2022. The Health Department has been working with our partners in the State Education Department to operationalize these changes and provide guidance to schools. Draft Regulations for Title 10 Part 67-4 were posted to the New York State Register in September. Public comment closed just a few days ago in November. I'll just mention briefly, as was discussed at the Public Health Committee meeting yesterday, our Center for Community Health Division of Family Health received a \$10,000,000 five-year grant award from the Health Resources and Services Administration to decrease maternal and infant morbidity and mortality and improve outcomes for birthing people and infants in New York. The funding will be used to convene a Maternal Health Task Force to assess maternal care and coverage, identify gaps that affect maternal health outcomes, and assist in the development of a strategic plan. Funds will also be used to improve state level maternal health data and surveillance by looking at severe maternal morbidity and associated disparities, examining low risk cesarean births and improving data linkage between our PRAMS, the Pregnancy Risk Assessment Monitoring System and other maternal data sources. We'll also implement two initiatives. One, a perinatal project ECHO. I know you're familiar with the Extension for Community Health Care Outcomes, which is a mentoring model to expand and enhance the capacity of hospital and community based providers that serve in medically underserved areas, or in this case, also maternity care deserts, and then a universal postpartum virtual home visiting initiative that will start out in St. Lawrence and Cortland counties and involve collaborating with a pair of birthing hospitals and established perinatal home visiting programs in each county. I do want to call out for members that our Office of Science completed a major improvement to five of our public health data dashboards. The Prevention Agenda Dashboard has been upgraded and to provide our 99 key performance indicators with new utility and updated data at the state, regional and county levels and even in some instances at the sub county level. We have a number of dashboards with our Community Health Indicators Reports, our Asthma Dashboard, the Maternal and Child Health Dashboard and the Opioid Dashboard. I think at the next Public Health Committee, we can walk through some of the enhancements to the Prevention Agenda Dashboard in particular. Committee members may enjoy exploring that dashboard and the prevention agenda data. Let me close there. Thanks.

Mr. Kraut Thank you.

Mr. Kraut I think we'd really like to see the dashboards at the next meeting. That would be great. I think that would be enjoyable.

Mr. Kraut Any questions for the Deputy Commissioner, but Commissioner?

Mr. Kraut Thank you so much for your report. I appreciate it.

Mr. Kraut Dr. Morley.

Dr. Morley Thank you, Mr. Kraut.

Dr. Morley I will be brief. Thank you for the opportunity. In terms of emergency medical services, I reported the last time on some issues involving the care of the incarcerated population at Green Haven Correctional Facility. I'm happy to report the Department of Corrections has identified emergency services that will be providing care in that area. This issue has led us to pursue some changes and so we will be proposing statutory changes to the Governor and to the Governor's Office as it relates to EMS coverage and availability.

Emergency preparedness, you've heard from the Commissioner related to the events of cybersecurity, which is high profile in the news these days. One hospital Health Alliance made the decision on their own to transfer all of the patients out when they had a cyber event to Westchester Medical Center in order to better deal with the process. As the Commissioner mentioned, the executive's budget has proposed \$500,000,000 just for I.T. purposes. It's not just for hospitals. \$500,000,000 is set aside for I.T. purposes and can be used for cybersecurity events. The Center for Provider Oversight. Hospital opened on October 29th. Closed on that same day. There were some speed bumps in the road. The department provided some additional EMS services for the potential transfer of patients if the need arose. Catholic Health opened its new hospital in Lockport under the Saint Mary's license. We currently have three hospitals in the process of application to become a critical access hospital. Those hospitals are Claxton, Hepburn, Massena and Wyoming Hospital. That's the highlights of my report. If there are any questions, I'd be happy to take them.

Mr. Kraut Sure.

Mr. Kraut Dr. Bennett.

Dr. Bennett Thank you.

Dr. Bennett Question it's not related to anything you specifically mentioned, but since you talked about emergency services. Emergency room wait times. I don't know if this is the right place to bring it up, but emergency room wait times in the Capital District are exceedingly high in my personal experience with our members. I know there was some recent data and some recent publications on that. Is there any update or plans for how we're going to address that?

Dr. Morley as it turns out, the Planning Committee, the subcommittee of PHHPC, which is chaired by Dr. Ruge and co-chaired by your neighbor there, Ann Monroe, has been looking at this for the better part of this last year. The committee has brought in experts to address pieces to this. This is obviously a huge, huge issue. It's not just in the Capital District. It's across the whole country. It may be worse in different parts of the country, but everybody is experiencing the same type of thing. A report is currently being prepared to bring to the Planning Committee, which will then be brought to the full PHHPC. That report will identify opportunities that have been identified. Not all of the opportunities, but at least get the process started. We certainly have concerns both as it relates to emergency rooms as well as outside of emergency rooms about oral health in the E.R. One of the pieces of this large elephant is coming up with ways to get patients that are oral care so that they don't end up spending time in emergency rooms where they get perhaps symptomatic relief, but the underlying problem does not get resolved. We know it's only a very small percentage of Medicaid patients who go to the E.R. with a dental problem that actually see a dentist in the following thirty days. There are a couple of ideas there. Also, significant numbers of patients with mental health issues are in the E.R. That's another area that was targeted by this committee. Unfortunately, for the patients with mental health issues they tend to have the longest waits in the emergency room and stays in the emergency room as well. Office of Mental Health has been working on this for a while and now has a funding of \$1,000,000,000 coming from the executive budget that will support multiple initiatives to try and get those patients alternatives to going to the E.R. and to getting connected to the care that they need. Unfortunately, one of the issues of the emergency room is that it is the ultimate safety net. When patients are looking for definitive therapy and unable to find it

they go to an emergency for dental care. Mental health, where there may not be a psychiatrist. We've got to get them connected to where those resources are.

Mr. Kraut Ms. Monroe then Dr. Berliner.

Ms. Monroe John, when you brought that up, we started this discussion because of the ambulance wait times. What we realized was that in addition to the behavioral health and oral health issues we're talking about there are also people in those ambulances and in those emergency rooms who really belong upstairs in a bed, but they can't get up there because they can't empty the beds. This is such a system wide issue that we're trying to get at it in a number of ways. Starting with folks who should not be in the emergency room, which is part of what's contributing to the wait time both in ambulances and in the emergency room. We ask that you be patient with us on this because it's going to take a while for us to address all of these issues.

Dr. Bennett I know, and I know you're working on it. I brought it up because it's so terribly important. The broader problem of access to health care of all types. This is a huge problem. I'll throw out something which you can totally ignore if you like obviously. This is a complicated problem. It's around throughput and process. Having had the opportunity to study engineering before I went into medicine, people in medicine don't really understand process engineering. This is a process problem. One of the things that I've been thinking of on many levels is that perhaps this problem needs the expertise of people outside the health care system to be brought in at some level as consultants who deal with process engineering and systems engineering, because this really is a throughput problem. Just a comment, thought... For whatever it's worth.

Mr. Kraut Dr. Berliner.

Dr. Berliner Dr. Morley, you said that there were three hospitals in the state applying for a critical access hospital designation. That's a federal designation, right? Does the state have any role in that?

Dr. Morley We do have a role in it because there is a CON portion to this, but there is federal role for it as well.

Dr. Berliner Thank you.

Mr. Kraut Mr. Robinson then Dr. Kalkut.

Mr. Robinson I just want to follow up a bit on the conversation that Dr. Bennett and Ms. Monroe led. I do agree that the emergency room is almost the critical epicenter of where the problem is. I do think that it's critically important that the state consider, as the budget is being put together for next year how nursing homes are funded. I actually believe that a good part of the backup that hospitals are experiencing right now is the fact that there isn't throughput to long term care facilities. That in part is due to obviously staffing and hiring people. Ultimately, it's a money issue. Because I think that if they were adequately reimbursed that nursing home capacity would grow and that would decompress hospitals. It's not the only part of the problem. There are others. I think it's a critical one. A short-term solution is a budget fix for long term care in this budget cycle coming up.

Dr. Kalkut I'd also want to join this conversation about the emergency room. I think my sense Downstate anyway is that it's gotten worse over the past year, year and a half. That

it's both increased volumes coming to the emergency room and patients waiting for beds in emergency room because there's even in place with quite a sufficient length of stays. I think complex for sure, process engineering notwithstanding, there's more and more use of emergency rooms and need for getting people into beds.

Dr. Morley I would just highlight and remind folks that the staffing shortage that everybody is acutely aware of has a very, very real impact in the emergency department, both directly for staffing of the E.R., but also for making beds available in the hospitals. That's part of what's made things worse. It's just part. There's many, many pieces to this.

Mr. Kraut Thank you so much.

Mr. Kraut Dr. Rugge, I think since some of what we just discussed is related to the Planning Committee, maybe you could give us a little update on the Planning Committee activities.

Dr. Rugge Actually Dr. Morley did a very nice job of giving you an update. That is, we are very concerned about long waiting times. We've identified or the Health Department's identified mental health and oral health as particularly important because they could be actionable. We've had a number of committee meetings and workshops, as you've already heard, and now staff is preparing a draft report for review by the committee in conjunction with the Commissioner and the Executive Chamber. We hope then to bring a revised report to this council for adoption also in the hope that this represents a first step of how to do health reform that will be progressively effective in addressing overuse and overloading and long wait times. Thank you.

Mr. Kraut Dr. Boufford, would you like to give a report on the Committee on Public Health?

Dr. Boufford Thank you very much.

Dr. Boufford I wanted to sort of bring the council up to speed a little bit about a number of meetings we've been having since June. Actually, the Public Health Committee has met now three times as of yesterday and the Ad Hoc Committee to advise on the prevention agenda has also met a couple of times. What we've been doing in partnership with Dr. Bauer and her team, Shane Roberts and colleagues in the Office of Public Health Practice is really having a series of panels and discussions. I know some of you have been part of them. To sort of get feedback on the most recent cycle of the prevention agenda in preparation for its successor cycle, which is 2025 to 2030. We've had sessions involving sister agencies, Office of Mental Health, Oasis, NYSOFA and Department of State who were sort of core partners, if you will, in the last round of the prevention agenda. One of the goals was very much mental health and substance use addressing prevention in those spaces. Our colleagues in the Department of State have been really helpful in supporting. I mean, in picking up, sort of how various of their regional economic development agendas could be tied to health promoting projects like greenspace or walkability or other priority areas, especially in some of the cities. They've also supported, along with NYSOFA, technical assistance on implementation of the prevention agenda for the last really several years before COVID and actually during COVID on a virtual basis. They've been very, very involved. I want to recognize their engagement with us. We also had meetings where our panel with NYSACHO has been part of New York State, local health department group has been part of a couple of hearings, and we are most recent one on the Ad Hoc Committee had the Greater New York Hospital Association and HANYS on a panel discussing their feedback on the most recent cycle of the prevention agenda. I think the findings have been

really useful in the sense that I think everybody is agreed that the prevention agenda has been a vehicle, maybe the major vehicle for putting prevention, if you will excuse the expression on the agenda of the state health department and the state health activities. The issue is that has been sort of more... Has not been connected really. I mean, the model at the local level is for local hospitals, health systems and health departments with stakeholders in each community and each county to sort of select a couple of items from the statewide agenda that are relevant to their local area and also to try to address disparities. There is a sort of infrastructure there. I think one of things that came out is that that infrastructure at the local level is very valuable. The issue of sort of how it could be. It has been not funded. This initiative has never been funded separately. There is now. I'm going to speak to that in a minute. I think one of the questions that's come up, especially with NYSOFA, Oasis and OMH is they also have local presence, if you will, at county level, at regional level and others from federal pass-through dollars area, offices on aging, etc. In many counties, those entities, those groups have been working together with local health departments pretty successfully over the last several years. In others, the partnership hasn't been quite what we might have liked but then there's been that COVID interruption, which is problematic. I think that's one thing I wanted to highlight. That it's more than a state led set of priority areas. It's really been for the last twelve years, really trying to build local connections and local infrastructure to implement. The second thing that's come out is that it's been seen as a really helpful heuristic device, if you will, for say, sort of like Healthy People. 2020, 2030 at the federal level is sort of saying we know there's a structure going on. We can use it to help us bill prevention capabilities within agencies and locally. It sort of says this is important. It's a nice visibility, point of visibility. We want to figure out how that might be retained in another cycle. I'm really delighted to hear about the dashboard work and the improvement in the health data. Because the dashboard was seen by everyone as being quite valuable. Obviously, it had not been updated in a significant way since before COVID. Similarly, because the last time the operational objectives for the prevention agenda were revised was 2019. There has been a lot of interest because the evidence is much stronger now about the important role of social determinants of health in prevention and the implications of that for the next round of the prevention agenda. I think Ursula mentioned there have been 99 objectives. Is that too many? Probably the answer is yes. Could we streamline them? Could we update the targets? Could we update the material that was provided to local health departments and agencies? We'd also discuss with our hospital colleagues about the fact that their collaboration at local level, I think now it's maybe at the 50% level that there is a joint process of looking at a community health needs assessment. This has been ten years after encouraging this to happen as part of the state health improvement obligations under community benefit. We'd like to see more of that. That's another emphasis we'd like to see going forward. We also had a presentation on Community Benefit focusing especially on the category called Community Health Improvement, which is the category defined by IRS within the link. We're not talking about GME or unreimbursed care or any of the big-ticket items. We're talking about this particular category. In fact, looking at the returns from hospitals it comes to about between \$2,000,000 and \$300,000,000 a year in that category. We now have a colleague at the University Albany School of Public Health who was working in the department, who's now getting his PhD looking at this data in a very granular fashion. We've always sort of hope that that might be channeled in the direction of a local priorities identified by the prevention agenda. That's sort of the prevention agenda. I'll finish with the fact that we will have another Public Health Committee meeting on December 12th. At that time, we will hear a report on the revision of the state health needs health assessment, which was the driver of the current prevention agenda. What are the major causes of preventable morbidity and mortality in the state? That was used to kind of drive the priorities that were selected. We'll have new data on that. The department

under Dr. Bauer's leadership and Shane Roberts have been looking at across multiple states that are doing state health improvement plans. What models are they using? How are they organizing themselves? Also considering other options to the current structure of the prevention agenda. At that meeting on the 12th, will be a really important meeting as we'll hear the initial options that the department is thinking about relative. One of which is continuing the current structure updated, but other options that the department is considering. Hopefully, then the idea, the next cycle being 2025 to 2030 would be guidance on the next cycle of prevention agenda and beginning to work through the details of that would happen in the first and second quarter. The hospitals would have six months or so to prepare documents to submit for the next cycle. There are other conversations going on about how frequently the cycle should be operating, etc. Those are other things that have come up in the course of our discussions. The other thing that the Public Health Committee has historically done is to pick a priority health issue in the state to work on in addition to its sort of regulatory statutory role of overseeing the prevention agendas. We discussed at our last meeting and yesterday heard the first report on the public health workforce, which was an issue that's come up. Obviously, the health care delivery workforce is being addressed in other areas. I understand that there's a workforce conversation going on in virtually every state agency. We might want to consider how those dots might be connected at some point. There's a new Office of Public Health Workforce. Our new Direct Workforce Director Keshana Owens-Cody, who gave us a nice presentation of her office, the staffing expectations. It is funded as part of the Biden State Infrastructure Bill, which public health was able to sequester finally some money for that public health infrastructure. There's sort of three pillars to that work in health departments, \$135,000,000, \$37,000,000, I think coming to New York, to the health department focusing on workforce, on infrastructure and then on data improvement. We heard our first presentation there and had a nice conversation with Ms. Owens-Cody about our habit of wanting to see how we can partner with them, how we could bring some of the issues she's facing to the public. We might be able to convene, as we did before with maternal mortality across the department with other agencies, etc. We had an update on maternal mortality from colleagues Kristen Siegenthaler and her colleagues just to give us that because that was one of the first issues we took on and actually had a white paper coming out of the council on it about five or six years ago, which we think led was important and leading to the Governor's commission on maternal mortality. We had an update there.

Dr. Boufford Yes, Ann.

Ms. Monroe Is any of that \$135,000,000 going to be going to the counties?

Dr. Boufford 40% is carved out for local health departments. We had an interesting discussion. Kevin may want to comment on it. That is sort of earmarked for them. Obviously, they will submit their perception of their needs there, both in terms of staffing and infrastructure and other issues. I think one of the things that had come up when we heard from NYSACHO was a concern that there are some of... Two concerns. One is that some of those funds they are actually processed through the County Executive's Office and may not all get to their hopeful destination. It was explained to us that that money is earmarked for the local health departments. Ursula may want to expand on that so that some of the concerns hopefully will be addressed but we'll have to keep our eye on it. The other issue that was raised is just the pace of processing the new positions and budget modifications, the hope that that would pick up because this first year of the CDC grants, a five-year grant for \$137,000,000 is really about staffing up. To the degree that doesn't move quickly or gets held the sort of results of the balance of the time is going to be difficult to come by.

Dr. Boufford I don't know if that answers your question, Ann.

Dr. Boufford I know if there are any other questions about that.

Mr. Lawrence There was also a nice discussion regarding the role of the community-based organization and recognizing the importance of their participation in this process. I think that it's also very important to never forget the cultural nuance of the community and how we tailor services and impact.

Dr. Boufford Just to re-emphasize that, I think part of when I talked about local infrastructure, community-based organizations and other stakeholders, advocacy groups, etc. have been part of that in many counties quite successfully, including the business community, which is the group that we've not really seen terribly involved systematically, although that is not the case. Again, every county is different. One of the areas is really trying to I noticed the Governor's Commission includes several members of the business community. I hope that's a signal that some of those folks will be joining because at local level it's very important.

Mr. Kraut This is a good segue way for the last issue. You listened to Dr. Boufford's report and to Dr. Ruge and what Commissioner Bauer and Dr. Morley talked about. We can spend three days just diving into the prevention agenda and some of the issues and the relationships. We've asked. We need to spend some time outside of the context of these meetings to dive deeper into issues that are going to come before the council. We've been trying to set up a retreat. It's really an extended meeting that would span probably a day and a half. We could probably spend three days to be honest on this. You're going to get polled very shortly. We are looking to schedule that in calendar at some time during the first two weeks of May. Probably the location may be Tarrytown. We can kind of get to it. The meeting would be set up is we'd get there late afternoon, have dinner, have a speaker that will talk about topics about the future of health care and then spend the following day broken up into two sections, I think. We are the Public Health and Health Planning Council. Some of the issues that Dr. Boufford described that Dr. Bauer's talking about is focus on public health issues that may come to us in terms of code, regulations, the prevention agenda, the community health needs assessment, where we do have a role and an input. The second is to look at issues that are going to impact the kind of applications that we may see that we've struggled with frankly. We're probably going to see... I don't want to predict more closures. I think you're going to see more evolution of hospitals. We've had several that have closed. They've evolved into micro-hospitals or freestanding ED. We haven't gotten those operators in here to talk about what's the impact of it? What's the department's perspective? What's the future? I think there are a host of those things. We are limited in time. Regulatory reform, the issues, the package that the Governor may be advancing in the state of the state address. I think we're going to start drafting an agenda, getting speakers, but not trying to rush it into thirty. I don't think we'll make them twenty-minute TED talks unless that's the right way to do it. I want to get speakers in here that allow you to engage and ask questions and have a conversation of things that are within our purview that will most likely come into this room that we're going to have to deal with, both in acute care and long-term care, the whole continuum. There's a lot of issues. We probably can't get everyone. We should try to get the ones that both from the department's perspective that they see coming down the road and from the members. I'm going to be polling you to do that. It's the first two weeks and in May we're going to try to lock down that day to see hopefully the majority of you can come. I doubt in the past everybody could come. We'll do the best we can to accommodate everybody from doing that. I have the

promise here that this is going to actually happen and please keep me to it and more importantly, keep the department to it. The next regularly scheduled committee day. There are two, as you just heard Dr. Boufford talked about December 5th is your meeting or 12th?

Mr. Kraut I'm sorry. I will correct my note. It is December 5th. December 5th we're having another Committee Day for the Committee on Public Health. Another Committee Day will be held on January 25th. The full council meeting is going to convene on February 8th. Both of those meetings will be in New York City. We also hope to have at that time something you've been asking about is the waiver to have that conversation as well. That is not up to me. Hopefully, they'll work out the T's and I's.

Mr. Kraut Yes, Mr. Lawrence.

Mr. Lawrence There's been, I guess, in the press and we heard today about the Governor's Commission on Health. I was just wondering whether there is a role for the PHHPC whether there's some engagement, some communication where we share the wisdom, concerns, observations and whether that would be helpful.

Mr. Kraut I think that although I have not engaged with the commission. I don't know who to engage with. I would encourage everybody who's a council member to write to the commission to engage with them as an individual. Not speaking on behalf of the public health. We sit at a unique perspective that needs to be shared. I am hoping we will be invited to engage in that. If not, I think we will have to write some sort of letter of the issues and concerns that have been in this room to share with them. I don't know the process for that. We have in the past drafted documents that lay out a host of issues in preparation for the last retreat we were planning before COVID. I'm going to fish that out of my One Drive. I think that's beneficial that if nothing else, I think if we can craft a document we would all be comfortable signing our names to that say these are the type of issues that we need to be addressed and where we can get a consensus have our perspective, but where we fail to get a consensus to encourage you as individuals to engage as well.

Mr. Robinson We may want to actually think about having the chair of the new commission come to a council meeting, present their thinking as the process is getting underway, have members of the council ask questions or provide some input and then follow that with the kind of formal input that would be coming from us.

Mr. Kraut My issue is I think we have to be a little more structured in our thinking. I would love that. Why don't I talk to the department and see how we can engage in that respect.

Mr. Kraut Yes, Dr. Berliner.

Dr. Berliner Jeff, for our next meeting I'm wondering if you could request from the department again that we get a report on the freestanding emergency rooms, micro-hospitals and all those kinds of things?

Mr. Kraut Well, I have to tell you, every one of them files a report with DOH. That's where I thought we'd bring them into this retreat to actually get different ones to kind of do it. I will ask the department. I don't know what they do with that information. As an operator of one of them, I'd be delighted to have our people in the room because I think it tells a great story.

Dr. Berliner If we only have a short period of time for the retreat.

Mr. Kraut We'll use one of the meetings.

Mr. Kraut Can we talk about that, please?

Mr. Kraut Yes, Dr. Kalkut.

Dr. Kalkut Just one other thing, we need to hear from the Office of Health Equity.

Mr. Kraut Unfortunately, she couldn't make it today. It has to be in person, not on Zoom.

Dr. Kalkut Thanks.

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

Mr. Kraut I have a motion.

Mr. Kraut All in favor?

Mr. Kraut So moved.

Mr. Kraut Thank you.

**NYS Department of Health
Public Health and Health Planning Council
Deputy Commissioner Executive Report
February 8, 2024**

I. OFFICE OF PUBLIC HEALTH

Center for Community Health

Community Disease Investigation Regulation Updates

As mentioned at the previous Public Health and Health Planning Council meeting, the Division of Epidemiology is working on updates to the communicable disease investigation regulation, Section 2.6 of Title 10, to add explicit flexibility which will allow local health departments to prioritize their investigation work appropriately and focus on investigations with the greatest public health impact.

Sexual Orientation and Gender Identity Demographic Information

Division of Chronic Disease Prevention staff updated the New York State Cancer Services Program data collection system to begin capturing sexual orientation and gender identity demographic information. The addition of sexual orientation and gender identity data collection in the program will support program efforts to offer a welcoming, safe, and respectful environment. The data collection was informed by the National Lesbian, Gay, Bisexual, Transgender Cancer Network, the New York State Cancer Detection and Education Program Advisory Council which includes clinical experts that offer services to, and represent, lesbian, gay, bisexual, transgender, queer (or questioning), intersex, and asexual (or allies, aromantic, or agender) communities, and internal Department of Health programs and colleagues with expertise in this data collection. Data collection changes were released October 1, 2023, along with support and training to program contractors to enhance cultural competency, reduce bias, and eliminate discrimination. Support and training will continue in the coming year.

Wanda, the Women, Infant and Children Chatbot

The New York State Women, Infant and Children Program continues to see successful outcomes from the Women, Infant and Children Chatbot, Wanda. Since the launch in April 2021, Wanda has grown into a reliable source of Women, Infant and Children program information and referral. In 2023, an average of 1,244 monthly referrals were sent from Wanda to Women, Infant and Children local agencies across the state. As of January 1, 2024, nearly 23,500 individuals have been referred to the Women, Infant and Children by Wanda. Statewide advertising and outreach campaigns, including transit ads and an animated Wanda video, continue to promote the virtual experience as a quick and easy way to learn about program eligibility and connect to a Women, Infant and Children office. A Spanish language version of the experience was launched on January 8, 2024, expanding access to reach a broader Women, Infant and Children-eligible population. The New York State Women, Infant and Children program also continues their partnership with Code for America, a not-for-profit organization focused on improving government's delivery of safety net programs and will pilot a 'live chat' feature later in 2024. 'Live chat' will facilitate direct feedback from Women, Infant and Children applicants and participants, help identify areas for program improvement, and inform decisions on how to enhance the customer experience. You can find Wanda on the New York State Department of Health website under Women, Infant and Children:

<https://www.health.ny.gov/prevention/nutrition/wic/>

Center for Environmental Health

The Center for Environmental Health is advancing several initiatives involving legislative or regulatory changes that will better safeguard New York State residents from contaminants in their water, homes, and environment. The following is a summary of four of our current priorities:

Addressing Childhood Lead Poisoning through Proactive Rental Inspections

Creation of Public Health Law §1377 set the stage for Center for Environmental Health to implement a proactive rental registry in identified communities of concern to combat childhood lead poisoning. The Center for Environmental Health is currently drafting regulations to administer, coordinate, and enforce lead safety inspections and remediation of conditions conducive to lead poisoning. These regulations will require lead safety inspections of all pre-1980 multi-dwelling rental units in communities of highest risk across the state, starting in Fall of 2025. We expect these regulations will be released for public comment in early 2024 and look forward to providing updates as the regulations and programs roll out. These draft regulations are not required to go before Public Health and Health Planning Council and reflect important work in the Center for Environmental Health.

Addressing Potential Radiological Exposure in Medical Settings

The Center for Environmental Health is working to redesign and modernize Title 10 Part 16 focused on Ionizing Radiation. These updates are required to incorporate and reference changes to multiple sections of the Federal Code of Regulations, including 10 CFR 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material. The proposed regulations also: I. Modernize regulations to reflect changes in medical practice, e.g., moving from film to digital imaging. II. Add quality assurance requirements for dental cone-beam CT units to bring them in line with quality assurance requirements for other medical units. III. Raise fees for the first time in over 20 years to cover operation costs. Average fee increases will be around 68%, below the level of inflation in the same time frame. We expect these regulations will be released for public comment in early 2024. These draft regulations are required to go before the Public Health and Health Planning Council and reflect important work ongoing in the Center for Environmental Health.

Adopting Model Food Code

The Center for Environmental Health has drafted revisions to State Sanitary Code Part 14 Food Service Establishments. The changes adopt the 2022 Model Food Code by reference. The New York State Department of Health is working with New York State Department of Agriculture and Markets to align and synchronize our code updates for consistent adoption of Model Food Code. DOH looks forward to presenting the details of the code in a future Public Health and Health Planning Council meeting.

Addressing Lead Service Lines in public water systems

The Center for Environmental Health developed templates for public water systems across the state to document inventories of lead service lines. These inventories are required to be submitted to New York State Department of Health by October 2024 by both Environmental Protection Agency's Lead and Copper Rule Revisions and by New York State Public Health Law 1114-b/ Lead Right to Know Act. These templates have been shared with Local Health Departments and public water systems to document lead service lines, an important step toward replacement of lead service lines to limit New Yorkers' exposure to lead from their drinking water.

Office of Science

In the last update, the Office of Science described enhancements to most of the key Office of Public Health data dashboards that the Office supports. Since then, there are several new updates to the data environment and to reporting:

The Office of Science has redesigned the Department of Health webpage navigation to make it easier for visitors to locate these data and have substantially upgraded the primary public health data page, making the upgraded dashboards and others more prominent. This page is found at <https://www.health.ny.gov/statistics/>

The Office of Science has migrated the Opioid Quarterly report, a quarterly series providing timely, *provisional* opioid epidemic data, from a static report to a new, interactive dashboard. This will enhance users' accessibility to and use of the data, while speeding up the time to publication of this information. This page is found with other drug epidemic data products at: <https://www.health.ny.gov/statistics/opioid/>

This new Opioid Quarterly dashboard was launched with the newly available October 2023 edition of the quarterly report. The Office of Science published the 2023 Opioid Annual Report, which provides an annual summary of *finalized* data and information related to the epidemic. Both are located at the link in the previous bullet.

The Prevention Agenda dashboard is in the process of being updated to the latest year's indicator data and will go live with this information in the near future.

The Office of Science completed the data component of the 2024 State Health Assessment and presented this to the Public Health and Health Planning Council's Public Health Committee on December 5th, 2023.

Wadsworth Center

The Wadsworth Center is actively engaging in initiatives to improve collaboration across the Department of Health and other state agencies, foster linkages with other states in the northeast region by leveraging our extensive experience in regulatory processes and providing recommendations regarding programs at the federal level in order to sustainably strengthen public health laboratory systems in New York.

Provided surge capacity for two laboratories in New York State for Legionella testing and for Shiga toxin-producing *E. coli* testing

Since late November 2023 Westchester County Health Department has requested assistance from the Wadsworth Center to test samples for the bacterial pathogen, Legionella, due to out-of-stock reagents and kits required for screening; to date we have tested over 20 samples since this request has been made. It is expected that this surge capacity should be completed by February.

At the end of December 2023, the NYC Dept of Health and Mental Hygiene also requested assistance from the Wadsworth Center due for Shiga toxin-producing *E. coli*, a serious pathogen found in contaminated foods. To date the Center has tested nearly 20 suspect specimens and expect surge testing to end at the beginning of February. This work is demanding and complicated as the testing of each specimen may include screening 10-100 *E. coli* colonies to find the Shiga toxic-producing *E. coli* pathogens for foodborne investigations.

Key analysis of varicella zoster virus infections in New York State was highlighted by the Association of Public Health Laboratories and the Centers for Disease Control and Prevention

Varicella zoster virus (VZV) is the cause of Chickenpox (children) and Shingles (adults). This infection can be prevented by pediatric and adult vaccines. The Wadsworth Center is a national Vaccine Preventable Diseases Reference Center and New York State has a long-standing interest in detecting and identifying varicella zoster virus infections. The Center recently completed an analysis of varicella zoster virus infections in New York State preceding the emergence of COVID-19. This work was highlighted nationally by both the Association of Public Health Laboratories and the Centers for Disease Control and Prevention as it is the first comprehensive analysis of varicella zoster virus infections over the course of the COVID-19 pandemic. During the earliest phases of the COVID-19 pandemic, there was a decrease in the detection of varicella zoster virus infections. This is believed to be due to reduced social interaction. Beginning in 2021, infections increased, likely due to a combination of the return to increased interaction in the community, as well as an increased proportion of unvaccinated individuals.

The level of varicella zoster virus positive cases observed in 2020 at the start of the pandemic has returned to pre-pandemic levels. This study demonstrates again that the public health programs of New York State are recognized nationally and set standards for the state and nation. It also indicates that educational efforts on the importance of getting vaccines are critical for both pediatric and adult populations to boost immunity and protect individuals and the general population.

The Wadsworth Center's Newborn Screening Program Comes Full Circle

The Newborn Screening Program of the Wadsworth Center was recently notified of a “special health concern” for a new baby whose mother has cystic fibrosis. The mother is on a combination cystic fibrosis therapy called Symdeko. Symdeko is one of a relatively new set of drugs that are life changing for people with cystic fibrosis and allows them to live more normal lives. As a result, increasing numbers of babies are born to mothers with cystic fibrosis because these babies have a higher risk for cystic fibrosis than the general population, their blood specimens are subject to more scrutiny.

Interestingly, the mother of this baby was identified by the Newborn Screening Program of the Wadsworth Center as a newborn in November 2002, less than 2 months after the start of newborn screening for cystic fibrosis. The more in-depth testing done of her baby found that the baby is a carrier of cystic fibrosis and is expected to be healthy without developing cystic fibrosis.

This work highlights that the Newborn Screening Program produces clinical laboratory data of importance for medical action and positive outcomes for citizens of New York State. Through this early detection of a baby with cystic fibrosis in 2002, this child was able to begin treatment quickly and later become a mother herself. Since that time, treatments for cystic fibrosis have improved to allow more normal life and improved screening for babies of these mothers who may develop significant health issues.

II. OFFICE OF PRIMARY CARE AND HEALTH SYSTEMS MANAGEMENT

Proposed Hospital and Service Closures

As you are probably aware, several hospitals have announced their plans to close either services or their entire facility. In some cases, the Department has not yet received a closure plan or health equity impact assessment, and in others, the closure plan, healthy equity impact assessment, and/or absorption analysis are under active review. As a result, the Department is unable to discuss these today. What we can say is that we are actively listening to community input regarding the importance of maintaining access to care and continuing to achieve health equity.

Certificates of Need – State of the State

Governor Hochul announced in the State of the State address that to alleviate strain on both providers and the State, she will instruct the Department of Health to make necessary updates to the State's Certificate of Need program, such as raising the financial thresholds that qualify a project for more detailed review and streamlining the application and approval processes, including for now-routine services.

- Project cost thresholds were last raised in 2017 and construction costs have escalated since then. Updating the Certificate of Need process will help to ensure that it continues to advance its objectives, is responsive to a changing health care environment, focuses Department and the Public Health and Health Planning Council resources on issues and projects with the greatest impact, and is as streamlined and expeditious as possible within the parameters of the statutory authority.
- The Department is currently working on a regulatory amendment package to NYCRR Title 10 Section 710.1 to increase monetary thresholds impacting the Certificate of Need level of review for construction projects (Full, Administrative, Limited reviews).
- These financial thresholds are set in regulation at NYCRR Title 10 Section 710.1 for Article 28 General Hospitals as well as Diagnostic and Treatment Centers, Ambulatory Surgery Centers, Nursing Homes, and Midwifery Birth Centers. Project cost thresholds for these facility types are currently lower than for general hospitals.
- Raising monetary thresholds requires regulatory amendment to NYCRR Title 10 Section 710.1 (Statute change not required). These amendments would require posting in the State register for a 60-day public comment period followed by the Public Health and Health Planning Council adoption.
- The Monetary thresholds alone do not determine Certificate of Need (CON) review level for construction projects. NYCRR Title 10 Section 710.1 delineates the criteria by which projects are assigned an appropriate level of review based on the specific circumstances of a project as well as the project cost. Therefore, the regulatory amendment package will also include changes to other parts of NYCRR Title 10 Section 710.1 to streamline the application and approval process.
- The proposal does not include raising the Certificate of Need fees paid by the health facilities (applicant).

Statewide Healthcare Transformation program

A total of \$1.6B is authorized through Fiscal Year 2024 for the Statewide Healthcare Transformation program (“Statewide”). \$650M of the Statewide IV appropriation has already been awarded, including \$450M for Statewide III projects and \$200M for emergency room modernization. \$950M remains to be awarded under three Requests for Applications (RFA) just announced under the Statewide IV and V programs, as follows:

- \$650M for health information technology, cybersecurity, and telehealth transformation projects (Statewide IV and V funds), Request for Applications #20258, released 1/2/24, with applications due March 13, 2024.
- \$50M for residential and community-based alternatives to traditional nursing home care (Statewide IV funds), Request for Applications #20340, released 1/9/24, with applications due April 9, 2024; and
- \$250M for facilities to drive transformative health care investments, with priority given to facilities in severe financial distress (Statewide IV funds), Request for Applications #20244, released 1/9/24, with applications due March 26, 2024.

Separate from these Statewide Request for Applications, the Council should also note that a new “Healthcare Safety Net Transformation Program” for hospitals is proposed in the Fiscal Year 2025 Executive Budget, under Health and Mental Hygiene Part S. The Executive Budget bill language authorizes and directs the State Comptroller to transfer up to \$500M of funds from Statewide IV and V to fund this new program.

Emergency Medical Services

This year, Governor Hochul advanced legislation to make Emergency Medical Services (EMS) an essential service to ensure that emergency medical service providers are required to respond to emergencies. In addition, Governor Hochul built upon the progress made in last year’s budget by directing the newly established Emergency Medical Services statewide taskforce to create five “Emergency Medical Services zones.” Each zone will maintain its own Emergency Medical Services workforce to augment local Emergency Medical Services agencies where the workforce is insufficient and can be deployed to respond to emergencies statewide. Further, Governor Hochul will establish a first-in-the-nation Paramedic Telemedicine Urgent Care program, which will use paramedics in rural areas and a healthcare provider via telemedicine to deliver low-acuity emergency services in a fixed location to decrease demands on the Emergency Medical Services system and reduce unnecessary Emergency Room visits. Key points related to the proposed amendment for essential services include that it:

- Declares Emergency Medical Services and Emergency Medical Dispatch as essential services in New York State.
- The emergency medical dispatch provision is proposed as a first step in being able to address offloading of crowded emergency departments resulting in Emergency Medical Services delays in a standardized way across the state.
- Requires every county to ensure medical emergency response is available within the boundaries of the county.

- Requires all counties to create a medical emergency response plan, designates primary medical emergency response agencies, and prohibits medical emergency response agencies from refusing to respond to calls unless they can prove, to the satisfaction of the state Department of Health, that they are unable to respond because of capacity limitations.
- Provides for permanent issuance of a non-transferable ambulance operating certificate to counties.
- Permits counties to establish special districts for the purpose of funding medical emergency response.
- Permits the department to establish minimum standards for medical emergency response services not otherwise defined in Public Health Law Article 30.

III. OFFICE OF AGING & LONG-TERM CARE

Program for All Inclusive Care for the Elderly (PACE)

As discussed previously with the Public Health and Health Planning Council, the Governor signed into law Article 29-EE which creates an entirely new licensure category for the Certificate of Need Review for Program for All Inclusive Care for the Elderly (PACE). This valuable program provides for a model of care that utilizes a coordinated model of care using an interdisciplinary team of health professionals; provides for a comprehensive benefit package that enables members to remain in the community rather than receive care in a nursing home; includes the operation of a Program for All Inclusive Care for the Elderly Center where a member receives medical care, socialization, and other Program for All Inclusive Care for the Elderly services; and has capped financing, that allows providers to deliver all services participants need rather than only those reimbursable under Medicare and Medicaid fee-for-service plans.

Work is now being done by the Office of Aging and Long-Term Care, in coordination with the Office of Health Insurance Programs to implement the provisions of this law including the finalization of regulation, development of a new unified application, Certificate of Need schedules and forms, and development of policies and procedures for application review and surveillance procedures. We are confident that over the next several weeks, we will have approval to resource our Alternative Model of Care unit, thereby allowing us to carry out the provisions of this law this Spring.

Hospice and Palliative Care

Launching The Center for Hospice and Palliative Care remains one of the Office of Aging and Long-Term Care's priority goals for 2024 and our commitment to address disparities and access barriers to end of life care. When fully resourced and launched, this Center will partner with internal and external stakeholders to assess and analyze policies and resource utilization in New York State and across the country, educate the public on hospice and palliative care, develop and communicate model practices and build strong cross-continuum stakeholder relations, showcasing our commitment to ensure equitable and accessible end-of-care life for all New Yorkers.

SFY 2025 Long-Term Care Budget Highlights

Long Term Care figures importantly in Executive's budget in several ways:

- Proposes actions that address stressed workforce needs by expanding scope of practice to allow for certified medication aides with the appropriate experience, training, and competency evaluation to administer certain medications in nursing homes.
- Sets forth a comprehensive package of amendments to New York State Public Health Law that expands access to care in the home through the Hospital at Home program by:
 - Authorizing a state program of inpatient care in the home aligning with the federal "Acute Hospital Care at Home" waiver program
 - Enables the State to collect the data needed to establish a Medicaid rate.
 - Addresses service gaps and community health care needs by expanding the types of providers and collaborations that can leverage New York State Public Health Law 2805-x.
- Supports families and informal caregivers of individuals with various forms of dementia by making permanent the Special Needs Assisted Living Residence Voucher Program
- Seeks to improve the quality and transparency of Assisted Living residences by establishing quality reporting and accreditation.

Additional Office of Aging and Long-Term Care Updates

The Office of Aging and Long-Term Care continues its work to support fiscally distressed nursing homes, hold all long-term care providers and agencies accountable for providing quality care and service delivery, and will assist in administering grants related to the Statewide IV – Alternatives to Nursing Home Initiative.

The Center for Residential Surveillance will continue its efforts to eradicate the surveillance backlog and produce high quality education and training opportunities for both staff and providers. In addition, a webinar is in the planning phases related to nursing home safe staffing that will educate providers on the enforcement process.

Master Plan for Aging – The team continues to work with several hundred stakeholders as they work to develop transformative and sustainable recommendations to be included in the Final report due to the Governor in January 2025. In addition, the team continues to host public listening sessions and Town Halls across the state that will help us identify challenges and collaborate on solutions that address issues all New Yorkers will encounter as they age.

IV. OFFICE OF HEALTH EQUITY AND HUMAN RIGHTS

AIDS Institute

Third Trimester Screening for Syphilis: New Testing Law rollout

As the New York State Department of Health prepares for amendments to Public Health Law to go into effect May 3, 2024, requiring a syphilis test during the third trimester of pregnancy in addition to syphilis testing at the time of first examination, the AIDS Institute within the New York State Department of Health is creating a Frequently Asked Questions document for providers on syphilis screening during pregnancy including all existing and new requirements for

syphilis screening during pregnancy to ensure there is a single comprehensive document for New York State providers.

Congenital Syphilis Elimination Strategic Planning Group Update

Members of New York State Department of Health's Congenital Syphilis Elimination Strategic Planning Group met for the fifth time on December 12, 2023, at a community members-only meeting and finalized a total of 31 recommendations and discussed action planning and the process for following a document of recommendations once published. Members left the meeting tasked to flesh out the details of the recommendations, definitions, and objectives in addition to being charged with prioritizing recommendations. As of this update, there has been a 57% response rate from members prioritizing the recommendations. Members will have two final meetings in 2024 to close out this planning cycle: February 28, 2024, and April 12, 2024.

Congenital Syphilis Social Media Efforts

Social media messaging and images were created, approved, and posted on New York State Department of Health's Facebook, Instagram, and X (formerly known as Twitter) beginning in December 2023. Messages sought to raise awareness about the rise of syphilis in New York State and promote syphilis screening and treatment, especially during pregnancy. The following hashtags and resource were included as part of the posts. #StopNewbornSyphilis. #Test3XForSyphilis [GetTested.cdc.gov](https://www.cdc.gov/gettested/)

Response to the Harmful Impact of Crystal Methamphetamine Use

Throughout 2023, the AIDS Institute continued its commitment to implement a statewide response to address the harmful impact of Crystal Methamphetamine use.

The AIDS Institute directed multi-year funding to Trillium Health (Mocha Center) and Evergreen Health to address crystal meth use in the Western New York region. This funding compliments the great efforts our partners at the New York City Department of Health and Mental Hygiene offer throughout the five New York City boroughs.

As data remains sparse, the University of Rochester received one year funding to conduct a pilot research study to learn about the current impact of crystal methamphetamine use specifically among Black Men who have Sex with Men across New York State.

Two community virtual discussions were successfully conducted, which held space for education and awareness through intentional discussions that reflects the impact crystal methamphetamine use has in communities that often experience societal and political marginalization.

Enhanced Drug Checking Programs

The New York State Department of Health's Office of Drug User Health within the AIDS Institute has implemented four enhanced drug checking programs operated by state-funded Drug User Health Hubs and a mail-based drug checking program. To date, there have been 546 samples tested by the Drug User Health Hubs program technicians using Fourier Transform Infrared Spectroscopy and 21 samples sent in for mail-based testing through a new program being piloted in the Broome County region of the state. The New York State Department of Health's Office of Drug User Health has worked closely with the New York State Department of Health's Bureau of Narcotics Enforcement to license these drug checking programs to engage in a *Controlled Substance Activity* at the program location.

Department of Health’s Gun Violence Prevention Efforts in 2024 State of the State

Governor Hochul announced major expansions to combat gun violence in New York in her 2024 State of the State and Executive Budget proposal. Her full proposal can be found [here](#).

As announced in the 2024 State of the State book, the New York State Health Systems for Gun Violence Prevention Taskforce will be comprised of representatives from hospitals, hospital systems, and hospital associations that will contribute to conversations impacting hospital-based settings. The establishment of the New York State Health Systems for Gun Violence Prevention Taskforce is underway. The membership will build support from leadership in hospital-based settings to promote implementation of recommended solutions to address and mitigate gun violence.

Also stated in the 2024 State of the State, the Office of Gun Violence Prevention, in partnership with stakeholders and experts across the Department of Health, will develop a syndromic surveillance system housing data related to firearm injury. The Office of Gun Violence Prevention will manage the data, maintain outputs, conduct trend analysis, and disseminate findings in a public dashboard.

The Office of Gun Violence Prevention continues to partner with the Department’s Office of Health Insurance Programs to provide guidance and technical support to clinicians and community organizations related to hospital violence intervention programs.

Office of Minority Health and Health Disparities Prevention

New York State American Indian Health Program

In New York State’s Fiscal Year 2024 Enacted Budget, a total of \$5 million was allocated to support New York State American Indian Health Program clinic providers for the Tuscarora, Tonawanda Seneca, and Onondaga Nations. Three contracts for \$1,666,666 each have been awarded to three contractors, Niagara Falls Memorial Medical Center, United Memorial Medical Center, and Upstate Medical University Hospital, serving the Tuscarora, Tonawanda Seneca, and Onondaga Nations, respectively. The Department of Health has executed two contracts and a Memorandum of Understanding related to the \$5 million in FY2024 funding for the three Nations.

Implementing Specific, Measurable, Attainable, Relevant and Time-based, Inclusion and Equity (SMARTIE) Goals

While SMART goals (Strategic, Measurable, Ambitious, Realistic, Time-bound) have been traditionally used, adding the I and E (Inclusive, and Equitable) ensures that racial and health equity are part of the process and provide additional steps to achieve a goal of health equity for all New Yorkers. The addition of Inclusive and Equitable will support efforts to continue to include our community partners and stakeholders who are experts with their communities and can provide guidance on how to keep their voices at the table. The Office of Minority Health and Health Disparities Prevention has been reviewing these to formally transition from Strategic, Measurable, Ambitious, Realistic, Time-bound to Strategic, Measurable, Ambitious, Realistic, Time-bound, Inclusive, and Equitable goals, as addressing racial and health equity and eliminating health disparities is at the core of the work we do and supported by our legislative charge. Examples and resources provided by the Centers for Disease Control and Prevention (CDC) will further guide the inclusion of the Strategic, Measurable, Ambitious, Realistic, Time-bound, Inclusive, and Equitable goals.

Health Disparities Center for Disease and Prevention Initiative to Support Lesbian, Gay, Bisexual, Transgender, Queer + Efforts

In June 2023, the New York State Department of Health received an award from the Center for Disease Control and Prevention: CDC-RFA-OT21-2103: National Initiative to Address COVID-19 Health Disparities Among Populations at High-Risk and Underserved, Including Racial and Ethnic Minority Populations and Rural Communities. This grant supports Office of Minority Health and Health Disparities Prevention's efforts in addressing racial and health disparities, health and health equity issues related to the Lesbian, Gay, Bisexual, Transgender, Queer+ community as to inform their work and programs.

The Office of Minority Health and Health Disparities Prevention in partnership with the AIDS Institute's Office of Lesbian, Gay, Bisexual, Transgender, Queer+ Services is planning a learn and discussion series to begin later in January 2024. Its audience will be New York State Department of Health staff who are interested in learning and discussing health and health equity issues related to the Lesbian, Gay, Bisexual, Transgender, Queer+ community as to inform their work and programs.

Mentorship in Medicine and other Health Professions

The Mentorship in Medicine and Other Health Professions program supports activities and approaches designed to contribute toward the reduction of barriers by promoting an increase in the number of economically disadvantaged and underrepresented minority students who elect to pursue careers in medicine and health related professions to become physicians and other health care professionals.

The Mentorship in Medicine and Other Health Professions program seeks to address health disparities among racial and ethnic minorities by supporting institutions focused on and with demonstrated commitment and capacity to increase minority and disadvantaged students' awareness and pursuit of careers in health care including behavioral health, and to increase the availability of science, technology, engineering and mathematics education programs. The Department of Health issued award/non-awardee letters last week related to the Mentorship in Medicine competitive opportunity. Hofstra University will be implementing the initiative for the next five years starting in May 2024 ending in April of 2029. This program will be supported by the Office of Minority Health and Health Disparities Prevention Local Assistance funding FY24-25 through FY 28-29 at \$50,000 per year. The amount of this funding will support existing pathway programs.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 2803 of the Public Health Law, section 405.45 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon filing with the Secretary of State, to read as follows:

405.45 Trauma Centers

(a) *Definitions.* The following terms when used in this section shall have the following meanings:

* * *

(3) “Level I trauma center” means a facility verified by the American College of Surgeons Committee on Trauma (ACS-COT), or other entity determined by the Department, and designated by the Department as a facility that is capable of providing the full range of services required of trauma patients; conducts trauma research; and provides training to surgical residents that comports with the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022). The standards set forth in the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022) are hereby incorporated by reference with the same force and effect as if fully set forth herein. A copy of *Resources for Optimal Care of the Injured Patient* [(2014)] (2022) is available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the American College of Surgeons Committee on Trauma, 633 North Saint Clair Street, Chicago,

Illinois 60611. A Level I trauma center shall have a transfer agreement with at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

* * *

(c) *Trauma Center Designation*

(1) A hospital seeking designation as a trauma center must receive verification by the American College of Surgeons, Committee on Trauma (ACS-COT), or other entity determined by the Department. To receive verification, the hospital must undergo a consultation site visit and verification site visit by the ACS-COT, or other entity determined by the Department. During the verification site visit, the hospital must exhibit that it is capable of providing Level I, Level II, Level III, Level IV or pediatric trauma care in accordance with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022).

* * *

(ii) Verification site visit.

A hospital seeking designation as a trauma center shall request an official verification site visit by the ACS-COT, or other entity determined by the Department, no later than two years following a hospital's receipt of its consultation site visit report. The hospital must receive confirmation from the ACS-COT, or other entity determined by the Department, that the hospital meets the criteria for trauma center verification in accordance with the criteria outlined in the ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022).

* * *

(d) *Requirements for Operating a Trauma Center.*

(1) Upon designation, a hospital operating a trauma center shall:

* * *

(ii) comply with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022);

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) section 2803. Pursuant to PHL § 2803(2), the Public Health and Health Planning Council (PHHPC) is authorized to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services.

Needs and Benefits:

The criteria and standards in the *Resources for the Optimal Care of the Injured Patient* are used to ensure that trauma center applications are compliant with the most current standards and the ACS uses these standards to issue the verification of trauma center status. The current edition of the *Resources for Optimal Care of the Sick and Injured Patient* (2014) is out-of-date and the proposed rule change would update the edition of *Resources for Optimal Care of the Sick and Injured Patient* to the most current version dated 2022. This change is necessary because the American College of Surgeons (ACS) began using the updated edition to perform hospital trauma center verifications and re-verifications on September 1, 2023.

COSTS:

Costs to Regulated Parties:

The proposed rule change may impose additional costs on trauma center hospitals due to new education requirements, expansion of available surgical and medical experts, the addition of a performance improvement coordinator, and the number of trauma registrars required in the updated 2022 standards set forth in *Resources for Optimal Care of the Sick and Injured* compared to the 2014 standards. The Department cannot provide an accurate estimate of these costs because they will vary significantly depending on what actions each trauma center hospital will need to take, or may have already taken, to meet the updated 2022 standards.

Costs to State and Local Governments:

This regulation imposes no new costs or fees to state and local governments. General hospitals operated by local governments may be affected as regulated entities if they are also designated as trauma centers pursuant to 10 NYCRR section 405.45.

Costs to the Department of Health:

This regulation imposes no new costs or fees to the Department of Health.

Local Government Mandates:

This regulation imposes no new government mandates.

Paperwork:

This regulation imposes no additional paperwork.

Duplication:

This regulation does not duplicate any State or federal rules.

Alternatives:

No alternatives to the proposed rule change were considered viable. The regulation needs to be updated since the ACS began using the updated edition of *Resources for Optimal Care of the Injured Patient* to perform hospital trauma center verifications and re-verifications on September 1, 2023.

Federal Standards:

There are no federal standards.

Compliance Schedule:

As of September 1, 2023, designated trauma center hospitals need to use the new 2022 edition of *Resources for Optimal Care of the Sick and Injured*.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

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

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

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

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

EMERGENCY JUSTIFICATION

State Administrative Procedure Act (SAPA) § 202(6) authorizes state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare where compliance with routine administrative procedures would be contrary to public interest. In this case, compliance with SAPA for filing of this regulation on a non-emergency basis, including the requirement for a public comment period, cannot be met because to do so would be detrimental to the health and safety of the general public.

The proposed regulatory changes to Title 10 NYCRR section 405.45 will update the publication date of *Resources for Optimal Care of the Injured Patient* from 2014 to 2022. This change is immediately needed because the American College of Surgeons (ACS) began using the updated edition to perform hospital trauma center verifications and re-verifications on September 1, 2023. The Bureau of Emergency Medical Services and Trauma Systems (the Bureau) works in concert with the ACS to issue preliminary verification to hospitals seeking trauma center verification. The Bureau uses the criteria and standards in the *Resources for the Optimal Care of the Injured Patient* to ensure that trauma center applications are compliant with the most current standards. The ACS uses these standards to issue the verification of trauma center status and once received, the Bureau issues the trauma center designation.

Failure to adopt the emergency regulation will result in a delay of verification and designation of new and existing trauma centers in New York State (NYS). It may also negatively affect trauma centers that have received notices of deficiencies in their ability to timely correct those deficiencies. The Bureau uses the standards set forth by ACS to re-inspect and assist trauma centers in resolving any deficiencies found with re-verification by

the ACS. Any delays in trauma center designation may cause delays in appropriate patient care because of traumatic injury, especially in rural areas, because trauma center designation provides the guideline for emergency medical services for transport to the appropriate facility.

As such, an emergency rule is necessary to ensure that the most current standards for trauma centers are employed in preliminary and permanent trauma center designation. Updating this rule prior to September 1, 2023, was not feasible because the ACS was still conducting verifications and re-verifications of trauma centers using the 2014 version of the standards and was not prepared to incorporate the new version until now. Accordingly, current circumstances necessitate immediate action, and pursuant to SAPA § 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 2803 of the Public Health Law, section 405.45 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon publication of a Notice of Adoption in the New York State Register to read as follows:

405.45 Trauma Centers

(a) *Definitions.* The following terms when used in this section shall have the following meanings:

* * *

(3) “Level I trauma center” means a facility verified by the American College of Surgeons Committee on Trauma (ACS-COT), or other entity determined by the Department, and designated by the Department as a facility that is capable of providing the full range of services required of trauma patients; conducts trauma research; and provides training to surgical residents that comports with the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022). The standards set forth in the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022) are hereby incorporated by reference with the same force and effect as if fully set forth herein. A copy of *Resources for Optimal Care of the Injured Patient* [(2014)] (2022) is available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the American College of Surgeons Committee on Trauma, 633 North Saint Clair Street, Chicago,

Illinois 60611. A Level I trauma center shall have a transfer agreement with at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

* * *

(c) *Trauma Center Designation*

(1) A hospital seeking designation as a trauma center must receive verification by the American College of Surgeons, Committee on Trauma (ACS-COT), or other entity determined by the Department. To receive verification, the hospital must undergo a consultation site visit and verification site visit by the ACS-COT, or other entity determined by the Department. During the verification site visit, the hospital must exhibit that it is capable of providing Level I, Level II, Level III, Level IV or pediatric trauma care in accordance with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022).

* * *

(ii) Verification site visit.

A hospital seeking designation as a trauma center shall request an official verification site visit by the ACS-COT, or other entity determined by the Department, no later than two years following a hospital's receipt of its consultation site visit report. The hospital must receive confirmation from the ACS-COT, or other entity determined by the Department, that the hospital meets the criteria for trauma center verification in accordance with the criteria outlined in the ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022).

* * *

(d) *Requirements for Operating a Trauma Center.*

(1) Upon designation, a hospital operating a trauma center shall:

* * *

(ii) comply with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022);

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) section 2803. Pursuant to PHL § 2803(2), the Public Health and Health Planning Council (PHHPC) is authorized to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services.

Needs and Benefits:

The criteria and standards in the *Resources for the Optimal Care of the Injured Patient* are used to ensure that trauma center applications are compliant with the most current standards and the ACS uses these standards to issue the verification of trauma center status. The current edition of the *Resources for Optimal Care of the Sick and Injured Patient* (2014) is out-of-date and the proposed rule change would update the edition of *Resources for Optimal Care of the Sick and Injured Patient* to the most current version dated 2022. This change is necessary because the American College of Surgeons (ACS) will be using the updated edition to perform hospital trauma center verifications and re-verifications starting on September 1, 2023.

COSTS:

Costs to Regulated Parties:

The proposed rule change may impose additional costs on trauma center hospitals due to new education requirements, expansion of available surgical and medical experts, the addition of a performance improvement coordinator, and the number of trauma registrars required in the updated 2022 standards set forth in *Resources for Optimal Care of the Sick and Injured* compared to the 2014 standards. The Department cannot provide an accurate estimate of these costs because they will vary significantly depending on what actions each trauma center hospital will need to take, or may have already taken, to meet the updated 2022 standards.

Costs to State and Local Governments:

This regulation imposes no new costs or fees to state and local governments. General hospitals operated by local governments may be affected as regulated entities if they are also designated as trauma centers pursuant to 10 NYCRR section 405.45.

Costs to the Department of Health:

This regulation imposes no new costs or fees to the Department of Health.

Local Government Mandates:

This regulation imposes no new government mandates.

Paperwork:

This regulation imposes no additional paperwork.

Duplication:

This regulation does not duplicate any State or federal rules.

Alternatives:

No alternatives to the proposed rule change were considered viable. The regulation needs to be updated since the ACS will be using the updated edition of *Resources for Optimal Care of the Injured Patient* to perform hospital trauma center verifications and re-verifications started on September 1, 2023.

Federal Standards:

There are no federal standards.

Compliance Schedule:

Beginning September 1, 2023, designated trauma center hospitals started using the new 2022 edition of *Resources for Optimal Care of the Sick and Injured*.

Contact Person:

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

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

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

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

Summary of Express Terms

The proposed amendments concern sections of 10 NYCRR Part 425 that apply to adult day health care services for registrants in a non-residential health care facility with medical needs. The purpose of the amendments is to come into compliance with the Centers for Medicare and Medicaid Services (CMS) home and community-based services (HCBS) Final Rule.

The amendments also ensure that Medicaid's HCBS program, in this non-residential setting, provides full access to the benefits of community living, and offers services in the most integrated settings, in compliance with requirements for the Medicaid HCBS provided under section 1915(c) of the federal Medicaid Act and federal regulations applicable to HCBS at 42 CFR §441.301.

The amendments are made to ensure compliance with these federal regulatory requirements, which require that for individuals receiving Medicaid HCBS, the setting in which HCBS is provided is integrated into and supports full access to the greater community. This includes opportunities to seek employment and work in competitive integrated settings, engage in community life and events, control personal resources, and receive desired services in the community, to the same degree of access as individuals not receiving Medicaid.

Amendments are in the following areas:

The setting should be selected by the individual from among setting options including non-disability specific settings.

The settings options must be identified and documented in the person-centered plan and are based on the individual's needs, preferences.

The setting should ensure an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

The setting should optimize, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact.

The setting should facilitate individual choice regarding services and supports, and who provides them.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 363-a(2) of the Social Services Law and Section 2803(2) of the Public Health Law, Part 425 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows: Part 425 Adult Day Health Care (Statutory Authority: Public Health Law, section 2803(2); Social Services Law, section 363-a(2))

Section 425.1 - Definitions

425.1 Definitions. As used in this Part:

(a) *Adult day health care* is a community-based model. It is defined as the health care services and activities provided in a non-residential group setting to a group of registrants with functional impairments to maintain their health status and enable them to remain in the community.

(b) *Registrant* is defined as a person:

(1) who is not a resident of a residential health care facility, is functionally impaired and not homebound, and requires supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative services or palliative care [or services] but does not require continuous 24-hour-a-day inpatient care and services, except that where reference is made to the requirements of Part 415 of this Subchapter, the term resident as used in Part 415 shall mean registrant;

(2) whose assessed social and health care needs can satisfactorily be met in whole or in part by the delivery of appropriate services in the community setting; and

(3) who has been accepted by an adult day health care program based on an authorized practitioner's order or a referral from a managed [long term]care plan [or care coordination model] and a comprehensive assessment conducted by the adult day health care program or by the managed [long term] care plan [or care coordination model].

(c) *Program* is defined as an approved adult day health care program listed on the operating certificate [located at] of a licensed residential health care facility or an approved extension site.

(d) *Operating hours for an adult day health care program* are defined as the period of time that the program must be open, operational, and providing services to registrants in accordance with the approval granted by the Department. Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, and must provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment in the form of snacks and hydration of choice, and [planned]activities at planned and at registrant desired times(s). In addition, an ongoing assessment must be made of each registrant's health status by the adult day health care program, or by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, in order to provide coordinated person-centered care planning, case management and other health care services as determined by the registrant's needs.

(e) *Visit* is defined as an individual episode of attendance by a registrant at an adult day health care program during which the registrant receives adult day health care services in accordance with his/her person-centered care plan. A registrant's individual visit may be fewer than five hours or longer than five hours depending on the assessed needs of the

registrant. Registrants referred by an agency, physician or a managed [long term] care plan [or care coordination model] will receive services as ordered by those entities in conformance with those entities' comprehensive assessment after discussion and consultation with the adult day health care program.

(f) *Registrant capacity* is defined as the total number of registrants approved by the Department for each session in a 24 hour day.

(g) *Operator of an adult day health care program* is defined as the operator of the [a residential] health care facility that is approved by the Department to be responsible for all aspects of the adult day health care program.

(h) *Practitioner* is defined as a physician, nurse practitioner or a physician's assistant with physician oversight.

(i) *Department* means the New York State Department of Health.

(j) *Commissioner* means the Commissioner of the New York State Department of Health.

[(k) *Care coordination model* means a program model that meets guidelines specified by the Commissioner that supports coordination and integration of services pursuant to Section 4403-f of the Public Health Law.]

(k) [(l)] *Comprehensive assessment* means an interdisciplinary comprehensive assessment of a registrant completed in accordance with Section 425.[6]7 of this Part by the adult day health care program, or an interdisciplinary comprehensive assessment, approved by the Department, completed by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program.

(l) [(m)] *Person-centered [C]care plan* means identifying goals and developing care plans [the care plan developed] in accordance with section 425.[7]8 of this Part by the

adult day health care program. Person-centered care planning is a process driven by the registrant that reflects the services and supports that are important to the registrant to meet their needs identified through an assessment of functional need, as well as what is important to the registrant with regard to the preference for the delivery of such services and supports 42 CFR 441.301(c)(2). Assists registrants in achieving their personally defined outcomes by integrating the registrant in, and supporting full access to, the community while providing registrant dignity and privacy.

(m [n]) *Unbundled Services/Payment Option* means the ability of an adult day health care program to provide less than the full range of adult day health care services to a functionally impaired individual [referred by a managed long term care plan or care coordination model] based on the registrant's comprehensive assessment. The full range of adult day health care services as described in Part 425 will be available to all registrants enrolled in the adult day health care program.

Section 425.2 - Application

425.2 Application. (a) Prior to operation of an adult day health care program, the proposed operator must apply for and receive Department approval in accordance with Part 710 of this Chapter. Such application must include a description of the proposed program, including but not limited to:

- (1) the need for the program, including a statement on the philosophy and objectives of the program;
- (2) the range of services to be provided;
- (3) the method(s) of delivery of services;

- (4) physical space to be utilized and planned use thereof;
 - (5) number and expected characteristics of registrants to be served;
 - (6) a description of a typical registrant's program;
 - (7) personnel to be employed in the program, including qualifications;
 - (8) intended use of and coordination with existing community resources;
 - (9) financial policies and procedures;
 - (10) program budget;
 - (11) methods for program evaluation; and
 - (12) proximity to an identified number of potential registrants.
- (b) A residential health care facility operator that has been approved by the Department to operate an adult day health care program at its primary site may provide adult day health care services at an extension site only when such use of an extension site has first been approved by the Department under the provisions of Part 710 of this Chapter.
- [(c) A residential health care facility operator that does not operate an adult day health care program at its primary site may provide such a program at an extension site approved by the Department for such use in accordance with section 710.1 of this Chapter if there is not sufficient suitable space within the residential health care facility to accommodate a full range of adult day health care program activities and services. The Department may conduct an on-site survey of the residential health care facility to determine whether the facility lacks suitable space for an adult day health care program.]

Section 425.3 - Changes in existing program

425.3 Changes in existing program.

(a) Applications for approval of changes in the program, including but not limited to substantial changes in the physical plant, space and utilization thereof, the extent and type of services provided, and the program's registrant capacity, must be submitted to the Department in writing and must conform with the provisions of Part 710 of this Chapter.

(b) Written requests for additional program sessions must be based on the number and needs of registrants and be approved by the Department.

(c) An operator may not discontinue operation of services to registrants without:

(1) notifying each registrant and making suitable plans for alternate services for each registrant; and

(2) receiving written approval from the commissioner in accordance with Part 710 of this Chapter. The application to discontinue services must set forth the specific intended date of discontinuance and the intended plans for alternate services to registrants.

(d) The operator of an approved adult day health care program must notify the Department of the program's election of the Unbundled Services/Payment Option in writing thirty days before commencement of this option.

Section 425.4 - General requirements for operation

425.4 General requirements for operation.

(a) An operator must:

(1) provide services to registrants consistent with the requirements of this Title and Part and other applicable statutes and regulations;

(2) provide appropriate staff, equipment, supplies and space as needed for the administration of the adult day health care program in accordance with the requirements

of this Part; and

(3) provide each registrant with a copy of a Bill of Rights specific to operation of the adult day health care program.

These rights include, but are not limited to:

(i) rights of privacy, dignity, respect, and confidentiality, including confidential treatment of all registrant records;

(ii) freedom to voice grievances about care or treatment without discrimination or reprisal;

(iii) protection and freedom from physical and psychological abuse, coercion and restraint;

(iv) participation in developing the person-centered care plan;

(v) written notification by the program to the registrant at admission and following the continued-stay evaluation of the services the registrant shall receive while attending the adult day health care program; and

(vi) right to individual initiative, autonomy, and independence in making life choices, including freedom to decide whether or not to participate in any given activity.

(4) be selected from among options by the individual and be physically accessible to the individuals supported;

(5) be integrated in and support full access to the greater community;

(6) facilitate an individual's informed choice about their services and who provides them;

(7) provide freedom and support for individuals to control their own schedules and activities;

(8) provide individuals access to food (meals and/or snacks) and visitors at any time;

(9) offer individuals participation in developing the person-centered care plan; and
(10) provide written notification by the program to the registrant at admission and
following the continued-stay evaluation of the services the registrant shall receive while
attending the adult day health care program.

(b) Administration. Without limiting its responsibility for the operation and management of the program, the operator must designate a person responsible for:

(1) coordinating services for registrants with services provided by community or other agency programs, including but not limited to certified home health agencies, social services agencies, clinics and hospital outpatient departments and services; provided, however, with respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model,] the coordination of such services shall be the responsibility of the managed [long term] care plan [or care coordination model]; and

(2) day-to-day direction, management and administration of the adult day health care services, including but not limited to:

(i) assigning adequate, consistent and appropriately licensed personnel to be on-duty at all times when the program is in operation to ensure safe care of the registrants;

(ii) assigning and supervising activities of all personnel to ensure that registrants receive assistance in accordance with their [plans of care] person-centered care plan;

(iii) ensuring supervision of direct care staff in accordance with state rules and regulation;

(iv) arranging for in-service orientation, training and staff development; and assuring that staff possess the competencies and skill sets necessary to meet the needs safely and in a manner that promotes each registrant's rights, and physical, mental and psychosocial

well-being; and

(v) maintaining records in accordance with provisions of sections 400.2 and 415.3(d)(1) of this Subchapter.

(c) Policies and procedures for service delivery. The operator must:

(1) establish and implement written policies and procedures, consistent with the approved application for operation of the adult day health care program, concerning the rights and responsibilities of registrants, the program of services provided to registrants, use of physical structures and equipment, and the number and qualifications of staff members and their job classifications and descriptions;

(2) ensure that written policies and procedures, consistent with current professional standards of practice, are developed and implemented for each service and are reviewed annually and revised as necessary;

(3) develop protocols for each involved professional discipline to indicate when the service of such discipline should be included in the registrant assessment;

(4) ensure that professional personnel are fully informed of, and encouraged to refer registrants to, other health and social community resources that may be needed to maintain the registrant in the community; provided, however, with respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model], such referrals shall be the responsibility of the managed long term care plan [or care coordination model];

(5) establish and implement written policies for the storage, cleaning and disinfection of medical supplies, equipment and appliances;

(6) establish and implement written policies and procedures concerning refunds and

prepayment for basic services in accordance with existing rules and regulations;

(7) establish and implement written policies and procedures concerning transfer and affiliation agreements covering registrants that are consistent with the standards specified in section 400.9 of this Subchapter; and

(8) provide in such agreement(s) reasonable assurance of assistance to each registrant in transferring to inpatient or resident status in a residential health care facility whenever the registrant is deemed by a practitioner to be medically appropriate for such care.

Section 425.5 – General requirements for Adult day health care settings

425.5 General requirements for Adult day health care settings.

(a) the operator must assure that the adult day health care program has all the qualities of a Home and Community-Based Service (HCBS) setting:

(1) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(2) The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered care plan and are based on the individual's needs and preferences.

(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(4) The setting optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices, including but not limited to, daily activities, physical environment, access to meals and snacks as desired at any time, and decisions concerning individuals with whom to interact. Visitors are not restricted.

(5) The setting facilitates individual choice regarding services and supports, and who provides them.

Section 425.6 - Adult day health care services

425.6 Adult day health care services.

(a) The operator must provide or arrange for services appropriate to each registrant in accordance with the comprehensive assessment conducted and person-centered care plan developed by the adult day health care program, or by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program. At least the following program components must be available:

- (1) case management;
- (2) health education;
- (3) interdisciplinary care planning;
- (4) nursing services;
- (5) nutrition;
- (6) social services;
- (7) assistance and supervision with the activities of daily living, such as toileting, feeding,

ambulation, bathing including routine skin care, care of hair and nails; oral hygiene; and supervision and monitoring of personal safety[.];

(8) restorative rehabilitative and maintenance therapy services;

[(8)] (9) planned therapeutic or recreational activities that reflect the interests, cultural backgrounds and the communities of the registrants and provide the registrants with choices, including access to offsite activities;

[(9)] (10) pharmaceutical services; and

[(10)] (11) referrals for necessary dental services and sub-specialty care.

(b) The following services may also be provided:

(1) specialized services for registrants with HIV or AIDS and other high-need populations; and

(2) religious services and pastoral counseling.

Section 425.[6]7 - Admission, continued stay and registrant assessment

425.[6]7 Admission, continued stay and registrant assessment.

(a) The operator must:

(1) select, admit and retain in the adult day health care program only those persons for whom adequate care and needed services can be provided and who, according to the comprehensive assessment conducted by the operator or by the managed [long term] care plan [or care coordination model] that referred the applicant to the adult day health care program, can benefit from the services and require a minimum of at least one (1) visit per week to the program;

(2) assess each applicant, unless the assessment was conducted by a managed [long term]

care plan [or care coordination model] that referred the applicant to the adult day health care program, utilizing an assessment instrument designated by the Department, with such assessment addressing, at a minimum:

(i) medical needs, including the determination of whether the applicant is expected to need continued services for a period of 30 or more days from the date of the assessment.

An operator may request approval by the appropriate Department regional office for an exemption, based on special circumstances, to the requirement for determining whether there is a need for continued services for 30 days or more.

(ii) use of medication and required treatment;

(iii) nursing care needs;

(iv) functional status;

(v) mental/behavioral status;

(vi) sensory impairments;

(vii) rehabilitation therapy needs, including a determination of the specific need for physical therapy, occupational therapy, speech language pathology services, and rehabilitative, restorative or maintenance care;

(viii) family and other informal supports;

(ix) home environment;

(x) psycho-social needs, social history, preferences and interests;

(xi) nutritional status;

(xii) ability to tolerate the duration and method of transportation to the program; and

(xiii) evidence of any substance abuse problem.

(3) register an applicant only upon appropriate recommendation from the applicant's

practitioner or operator's medical director after completion of a personal interview by appropriate program personnel;

(4) register an applicant only after determining that the applicant is not [receiving the same services from another facility or agency.] enrolled in another adult day health care program.

(b) An individual may be registered in an adult day health care program only if his/her comprehensive assessment indicates that the program can adequately and appropriately care for the physical and emotional health needs of the individual.

(c) No individual suffering from a communicable disease that constitutes a danger to other registrants or staff may be registered or retained for services on the premises of the program.

(d) The operator may admit, on any given day, up to 10% over the approved capacity for that program. The average annual capacity, however, may not exceed the approved capacity of the operator's program.

Section 425.[7]8 - Registrant person-centered care plan

425.[7]8 Registrant person-centered care plan.

The operator must ensure that: (a) [An adult day health care program] A person-centered care plan based on the comprehensive assessment required by this Part, and, when applicable, a transfer or discharge plan, is developed for each registrant and is in place within five visits or within 30 days after registration, whichever is earlier. The adult day health care program and the referring managed [long term] care plan [or care coordination model] must be sure to coordinate with each other regarding the

development of a registrant's person-centered care plan.

(b) Each registrant's person-centered care plan process must be commensurate with the level of need of the registrant, and the scope of services and supports available and must[include]:

(1) [designation of a professional person to be responsible for coordinating the care plan]include registrant led input and include people chosen by the registrant;

(2) provide necessary information and support to ensure the registrant directs the process to the maximum extent possible and is enabled to make informed choices and decisions, with the registrant's representative having a participatory role, as needed and as defined by the registrant, unless State law confers decision-making authority to the legal representative;

(3) be timely and occur at times and locations of convenience to the registrant;

(4) reflect cultural considerations of the registrant and be conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient;

(5) include strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants;

(6) offer choices to the registrant regarding the services and supports the registrant receives and from whom;

(7) include a method for the registrant to request updates to the care plan, as needed;

and

(8) record the alternative home and community-based settings that were considered by the registrant.

(c) The person-centered care plan must reflect the services and supports that are important for the registrant to meet the clinical and support needs as identified through an assessment of functional need, as well as what is important to the registrant with regard to preferences for the delivery of such services and supports. The written plan must also:

(1) reflect [2] the registrant's pertinent diagnoses, including mental status, types of equipment and services required, case management, frequency of planned visits, prognosis, rehabilitation potential, functional limitations, planned activities, nutritional requirements, medications and treatments, necessary measures to protect against injury, instructions for discharge or referral if applicable, orders for therapy services, including the specific procedures and modalities to be used and the amount, frequency and duration of such services, and any other appropriate item.

[3](2) reflect the registrant's strengths and preferences, the medical and nursing goals and limitations anticipated for the registrant and, as appropriate, the nutritional, social, rehabilitative and leisure time goals and limitations;

[4](3) set forth the registrant's potential for remaining in the community; [and]

[5](4) include a description of all services to be provided to the registrant by the program, informal supports and other community resources pursuant to the person-centered care plan, and how such services will be coordinated;

(5) reflect that the setting in which the registrant receives services is chosen by the registrant;

(6) reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed;

(7) be understandable to the individual receiving services and supports, and the individuals important in supporting them. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities or with limited proficiency in English;

(8) identify the individual and/or entity responsible for monitoring the plan;

(9) be finalized and agreed to, with the informed consent of the registrant (and/or persons identified by the registrant) in writing and signed by all individuals and providers responsible for its implementation;

(10) be distributed to the registrant and other people involved in the plan;

(11) include those services, the purchase or control of which the registrant elects to self-direct; and

(12) prevent the provision of unnecessary or inappropriate services.

([c]d) Development and modification of the person-centered care plan is coordinated with other health care providers outside the program who are involved in the registrant's care.

([d]e) The responsible persons, with the appropriate participation of consultants in the medical, social, paramedical and related fields involved in the registrant's care, must:

(1) record in the clinical record changes in the registrant's status which require alterations in the registrant person-centered care plan;

(2) modify the person-centered care plan to reflect registrant physical and social changes accordingly;

(3) review the person-centered care plan at least once every six months and whenever the registrant's condition warrants and document each such review in the clinical record; and

(4) promptly alert the registrant's authorized practitioner of any significant changes in the registrant's condition which indicate a need to revise the person-centered care plan.

Section 425.[8]9 - Registrant continued-stay evaluation

425.[8]9 Registrant continued-stay evaluation. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must ensure that a written comprehensive assessment and evaluation is completed pursuant to section 425.[6]7 of this Part at least once every six months for each registrant, addressing the appropriateness of the registrant's continued stay in the program, such assessment and evaluation to address, at a minimum:

- (a) a reassessment of the registrant's needs, including an interdisciplinary evaluation of the resident's need for continued services;
- (b) the appropriateness of the registrant's continued stay in the program;
- (c) the necessity and suitability of services provided; and
- (d) the potential for transferring responsibility for or the care of the registrant to other more appropriate agencies or service providers.

Section 425.[9]10 - Medical services

425.[9]10 Medical services. The operator must, without limiting its responsibility for the operation and management of the program:

- (a) assign to the operator's medical board, medical advisory committee, medical director or consulting practitioner the following responsibilities regarding registrants of the program:

- (1) developing and amending clinical policies;
 - (2) supervising medical services;
 - (3) advising the operator regarding medical and medically related problems;
 - (4) establishing procedures for emergency practitioner coverage, records and consultants;
- and
- (5) establishing professional relationships with other institutions and agencies, such as general hospitals, rehabilitation centers, residential health care facilities, home health agencies, hospital outpatient departments, clinics and laboratories;
- (b) ensure that medical services, including arranging for necessary consultation services, are provided to registrants of the program in accordance with sections 415.15(b)(1), (2)(ix), (3) and (4) of this Subchapter;
 - (c) provide or arrange for the personal, staff or other designated practitioner to obtain a medical history and a physical examination of each registrant, including diagnostic laboratory and x-ray services, as medically indicated, within six weeks before or seven days after admission to the program;
 - (d) ensure that the practitioner record, date and authenticate significant findings of the medical history, physical examination, diagnostic services, diagnoses and orders for treatment in the registrant's clinical records; and
 - (e) ensure that orders for treatment include orders for medication, diet, permitted level of physical activity and, when indicated, special orders or recommendations for rehabilitative therapy services and other adult day health care services.

Section 425.[10]11 - Nursing services

425.[10]11 Nursing services. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

- (a) evaluate the need of each registrant for nursing care on a periodic and continuing basis, but not less often than quarterly, and, when appropriate, provide or authorize such care;
- (b) ensure that a registered professional nurse is on-site and performs a nursing evaluation of each registrant at the time of admission to the program, unless such nursing evaluation has been performed by the managed [long term] care plan [or care coordination model] prior to referring the registrant to the adult day health care program;
- (c) ensure that for each registrant the findings of the nursing evaluation, the nursing care plan, and recommendations for nursing follow-up are documented, dated and signed in the registrant's clinical record;
- (d) ensure that nursing services are provided to registrants under the direction of a registered professional nurse who is on-site in the adult day health care program during all hours of the program operation. Based on the care needs of the registrants, a licensed practical nurse may provide the on-site services under the supervision of a registered nurse;

[Based on the care needs of the registrants, for a program located at the sponsoring licensed residential health care facility, a licensed practical nurse may provide the on-site services when a registered professional nurse is available in the nursing home or on the campus to provide immediate direction or consultation;] and

(e) ensure that appropriate health education is provided to registrants, [and] family members and people chosen by the registrant to provide support [for the registrant and family] in understanding and dealing with the registrant's health condition as it relates to his/her continued ability to reside in the community. With respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model,] the managed [long term] care plan [or care coordination mode] shall be responsible for compliance with the requirements of this section.

Section 425.[11]12 - Food and nutrition services

425.[11]12 Food and nutrition services. The operator must:

- (a) provide nutritional services for each registrant;
- (b) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled and registrant desired meal/snack times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant person-centered care plans;
- (c) ensure that the quality and quantity of food and nutrition services provided to registrants are in conformance with section 415.14 of this Subchapter, exclusive of the requirements specified in section 415.14(f);
- (d) ensure that nutrition services are under the direction of a qualified dietitian, as defined in section 415.14 of this Subchapter; and
- (e) ensure that dietary service records for the adult day health care service are maintained in conformance with sections 415.14(c)(1) and (2) of this Subchapter.
- (f) Provide individuals with access to snacks and meals at any time and obtain registrant

feedback on foods of preference.

Section 425.[12]13 - Social services

425.[12]13 Social services. The operator must:

- (a) provide social services in conformance with section 415.5(g) of this Subchapter except that the use of a full or part time social worker in an adult day health care program must be in conformance with the approved application for operation and, with respect to section 415.5(g)(2)(ii) and (iii), regular access may be directly with a master's prepared or certified social worker or through a contract which meets the provisions of section 415.26(e);
- (b) either directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, ensure that psycho-social needs are assessed, evaluated and recorded, and that services are provided to meet the identified needs as part of the coordinated care plan; and
- (c) ensure that staff members arrange for the use of and/or access to other community resources as needed and coordinate the needs of the registrants with services provided by the adult day health care program and other health care providers, community social agencies and other resources provided, however, with respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model], this shall be the responsibility of the managed [long term] care plan [or care coordination model].

Section 425.[13]14 - Rehabilitation therapy services

425.[13]14 Rehabilitation therapy services. The operator, either directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

- (a) provide or arrange for rehabilitation therapy services to registrants determined through the comprehensive assessment to need such services; and
- (b) ensure that the rehabilitation therapy services provided are in conformance with section 415.16 of this Subchapter.

Section 425.[14]15 - Activities

425.[14]15 Activities. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

- (a) ensure that activities are an integral part of the program, are age appropriate, and reflect the registrants' individual interests and cultural backgrounds in coordination with the registrant's person-centered care plan;
- (b) ensure that activities involve integration in and full access of individuals to the greater community, control personal resources and ability to engage in community life to the same degree of access as individuals not receiving home and community-based services;
- (c) ensure that activities are designed to enhance registrant participation in the program, home life and community;
- ([c]d) involve appropriate volunteers and volunteer groups in the program, unless prohibited by law;

([d]e) provide sufficient equipment and supplies for the operation of the activity program;

([e]f) provide or arrange for transportation to and from community events and outings;

and

([f]g) ensure that activities are included as part of each person-centered care plan.

Section 425.[15]16 - Religious services and counseling

425.[15]16 Religious services and counseling.

If provided, religious services and counseling must be included in the registrant's person-centered care plan.

Section 425.[16]17 - Dental services

425.[16]17 Dental services. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must, as appropriate:

- (a) provide or refer registrants for dental services; and
- (b) ensure that dental services provided to registrants or for which they are referred are in conformance with the needs identified during the comprehensive assessment.

Section 425.[17]18 - Pharmaceutical services

425.[17]18 Pharmaceutical services. The operator must:

- (a) develop and implement written policies and procedures governing medications brought to the program site by registrants;
- (b) ensure that pharmaceutical services, when provided for registrants, are in

conformance with section 415.18 of this Subchapter, exclusive of the requirements of section 415.18(c);

- (c) ensure that each registrant's drug regimen is reviewed at least once every six months by a registered pharmacist in accordance with the registrant's person-centered care plan and otherwise modified as needed following consultation with the registrant's attending practitioner. Any modification to the drug regimen must be documented in the registrant's clinical record and included as a revision to the registrant's person-centered care plan; and
- (d) ensure that written policies and procedures require the pharmacist to report any irregularity in a registrant's drug regimen and recommendations to the registrant's attending practitioner and to the program coordinator, with appropriate documentation in the registrant's clinical record and person-centered care plan.

Section 425.[18]19 - Services for registrants with Acquired Immune Deficiency Syndrome (AIDS) and other high-need populations

[425.18] 425.19 Services for registrants with Acquired Immune Deficiency Syndrome (AIDS) and other high-need populations.

(a) Applicability.

(1) This section applies to an adult day health care program approved by the commissioner pursuant to Part 710 of this Chapter as a provider of specialized services for registrants with AIDS and other high-need populations that in the discretion of the Commissioner would benefit from receiving adult day health care services.

(2) For purposes of these regulations, AIDS means acquired immune deficiency syndrome and other human immunodeficiency virus (HIV) related illness.

(b) General requirements. The program shall provide comprehensive and coordinated health services in accordance with this Article and requirements set forth in Part 759 of this Title and shall receive payment for such services in accordance with section 759.14 of this Title.

Section 425.[19]20 - General records

425.[19]20 General records. The operator must:

(a) maintain on the premises of the program or facility the following registrant written records including the person-centered care plan, which must be easily retrievable and must include, but not be limited to, the following:

(1) a chronological admission register consisting of a daily chronological listing of registrants admitted by name with relevant clinical and social information about each, including as a minimum, name, address, next of kin, attending practitioner, principal diagnosis, and the place from which each registrant was admitted;

(2) a chronological discharge register consisting of a daily chronological listing of registrants discharged by name, the reason for discharge and the place to which the registrant was discharged;

(3) a daily census record consisting of a summary report of the daily registrant census with cumulative figures for each month and each year; and

(4) general records in conformance with sections 415.30(e) - (o) of this Subchapter.

(b) ensure that each record includes non-medical information consisting of:

(1) all details of the referral and registration;

(2) identification of next of kin, family and sponsor;

- (3) the person or persons to be contacted in the event of emergency;
 - (4) accident and incident reports;
 - (5) non-medical correspondence and papers pertinent to the registrant's participation in the program; and
 - (6) a fiscal record including copies of all agreements or contracts.
- (c) Maintain as public information, available for public inspection, records containing copies of all financial and inspection reports pertaining to the adult day health care services that have been filed with or issued by any governmental agency for six years from the date such reports are filed or issued.

Section 425.~~20~~21 - Clinical records

425.~~20~~21 Clinical records. The operator must:

- (a) provide a clinical record for each registrant in accordance with the clinical records requirements of section 415.22 of this Subchapter;
- (b) ensure that all reports and information pertaining to registrant care and planning are entered promptly;
- (c) ensure that all entries are dated and authenticated by the person making the entry or ordering the services;
- (d) ensure that all clinical records for registrants referred by a managed [long term] care plan [or care coordination model] are made available to the referring managed [long term] care plan [or care coordination model];
- (e) ensure that the record is kept in a place convenient for use by authorized staff; and
- (f) retain intact clinical records and all other records of registrants and keep them readily

accessible in a safe and secure place. Such records shall be retained safely and securely for a period of six years following discharge or cessation of operation of services. In the case of a minor, retention shall be for three years after reaching majority (18 years of age).

Section 425.~~21~~22 - Confidentiality of records

425.~~21~~22 Confidentiality of records. The operator shall keep confidential and make available only to authorized persons all medical, social, personal and financial information relating to each registrant.

Section 425.~~22~~23 - Program evaluation

425.~~22~~23 Program evaluation.

(a) Quality improvement. The operator must develop and implement a quality improvement process that provides for an annual or more frequent review of the operator's program. Such evaluation must include a profile of the characteristics of the registrants admitted to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services, and disposition upon discharge. The process must:

(1) include an evaluation of all services in order to enhance the quality of care and to identify actual or potential problems concerning service coordination and clinical performance;

(2) review accident and incident reports, registrant complaints and grievances and the actions taken to address problems identified by the process;

- (3) develop and implement revised policies and practices to address problems found and the immediate and systematic causes of those problems; and
 - (4) assess the impact of the revisions implemented to determine if they were successful in preventing recurrence of past problems.
- (b) The results of the quality improvement process must be reported to the chief executive officer, nursing home administrator or governing body.

Section 425.[23]24 - Payment

425.[23]24 Payment

- (a) Payments to adult day health care program by State government agencies.
- (1) A program may only bill for one visit per registrant per day.
 - (2) The majority of registrants for whom the program receives a payment made by a government agency must be in attendance for at least five hours.
- (b) Payments to adult day health care programs by managed[long term]-care plans, [or care coordination models:]
- (1) Payments shall be made in accordance with the negotiated agreement between the adult day health care program and the managed [long term] care plan [or care coordination model].
 - (2) The full range of adult day health care services shall be available to registrants with a medical need for such services. Based on a registrant's individual medical needs, as determined in the comprehensive assessment, the managed [long term] care plan [or care coordination model] may order less than the full range of adult day health care services. Nothing shall prohibit adult day health care programs and managed [long term] care

plans [or care coordination models] from agreeing to reimbursement terms that reflect a registrant's receipt of less than the full range of adult day health care services.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803(2) of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to medical facilities. Section 201(1)(v) of the Public Health Law and section 363-a of the Social Services Law provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

To implement programs beneficial to Medicaid recipients, including those persons who require health care services and activities in a non-residential group setting.

Needs and Benefits:

The legislature has determined that oversight of adult care facilities is in the interests of the state, as Adult Day Health Care (ADHC) programs provide medically supervised services, as well as personal care and socialization to individuals with physical and mental impairments or chronic illnesses who otherwise would require nursing home admission.

The proposed rule provides clear guidance to the operators of ADHC facilities, reflecting Centers for Medicare & Medicaid Services' (CMS) intent to ensure that individuals receiving services and supports through Medicaid's home and community-based services

(HCBS) programs have full access to the benefits of community living and are able to receive services in the most integrated setting.

With these proposed regulations, the Department seeks to assure the continued viability of these valued programs by permitting them to offer their services to elderly and disabled populations with functional impairments to maintain their health status and enable these persons to remain in the community.

CMS announced new rules that will potentially have a far-reaching and positive impact on the nature of day service settings funded through Medicaid as part of HCBS. The proposed regulations are needed as they can contribute to better quality services and more opportunities for individuals with disabilities who require less than institutional level of care, but still have a significant need to have access to greater number of services in the community which they might not otherwise qualify. The purpose of the amendments is to come into compliance with CMS' HCBS Final Rule. The proposed amendments provided will refer an enrollee to an ADHC program who will be responsible for meeting Part 425 Adult day health care requirements. It is the responsibility of the ADHC program operator to manage and coordinate the enrollee's health care needs and be guided by the requirements outlined in the HCBS rule.

The proposed amendments will ensure that all ADHC programs in a non-residential setting provide full access to the benefits of community living and offer services in the most integrated settings.

Lastly the proposed amendments aim to ensure that enrollees have a free choice of setting options, who provides services to them, and that individual rights and freedoms are not restricted, among other provisions.

Costs:

Costs to Regulated Entities:

There will be no costs incurred by regulated entities.

Costs to State Government:

There will be no costs incurred by state government.

Costs to Local Governments:

There will be no costs incurred by local governments.

Local Government Mandates:

There is no local government program, service, duty or responsibility imposed by the rule.

Paperwork:

There are no new reporting requirements imposed by the rule.

Duplication:

There are no other rules or other legal requirements of the state and federal governments that may duplicate, overlap or conflict with the rule.

Alternatives:

This rule is a necessary update to maintain the Department's oversight of the adult care facility program in compliance with federal Medicaid HCBS requirements. There were no significant alternatives to this rule.

Federal Standards:

CMS published a final rule that established new standards for approved settings for the provision of Medicaid-funded home and community-based services. Also established were new person-centered planning and conflict-of-interest requirements. The proposed change is to align with the Medicaid HCBS under Section 1915(c), 1915(i), and 1915(k) of the Social Security Act.

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department will provide educational webinars for all adult care facilities prior to promulgation.

Compliance Schedule:

Adult care facilities will be able to comply with this regulation upon publication of the Notice of Adoption in the State Register.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

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

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

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

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A job impact statement is not being submitted with this rule because it is evident from the nature and purpose of these amendments that the regulation will not have a substantial adverse impact on jobs and/or employment opportunities.

Pursuant to the authority vested in the Commissioner of Health by Section 2803 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by amending sections 405.11 and 415.19, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 405.11 is amended by adding a new subdivision (g) as follows:

(g) (1) The hospital shall 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 and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 550;

(ii) for gowns, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 41;

(iii) for surgical masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 21; and

(iv) for N95 respirator masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 9.6.

(3) A hospital shall be considered to possess and maintain the required PPE if:

(i) it maintains all PPE on-site; or

(ii) it maintains PPE off-site, provided that the off-site storage location is within New York State, can be accessed by the hospital within at least 24 hours, and the hospital maintains at least a 10-day supply of all required PPE on-site, as determined by the calculations set forth in paragraph (2) of this subdivision. A hospital may enter into an agreement with a vendor to store off-site PPE, provided that such agreement requires the vendor to maintain unduplicated, facility-specific stockpiles; the vendor agrees to maintain at least a 60-day supply of all required PPE, or a 90-day supply in the event the Commissioner increases the required stockpile amount pursuant to this subdivision (less the amount that is stored on site at the facility); and the PPE is accessible by the facility 24 hours a day, 7 days a week, year round. In the event the Department finds a hospital has not maintained the required PPE stockpile, it shall not be a defense that the vendor failed to maintain the supply.

(iii) Any PPE stored outside of New York State shall not count toward the facility's required 60-day stockpile.

(4) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(5) The Department shall periodically determine the number of staffed beds in each hospital. Hospitals shall have 90 days to come into compliance with the new PPE stockpile requirements, as set forth in paragraph (2) of this subdivision, following such determination by the Department. Provided further that the Commissioner shall have discretion to determine an applicable bed

calculation for a hospital which is different than the number of staffed beds, if circumstances so require.

(6) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers, and providers are strongly encouraged to rotate inventory through regular usage and replace what has been used in order to ensure a consistent readiness level and reduce waste. Expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(7) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the hospital's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the hospital with a fourteen-day grace period, solely for a hospital's first violation of this section, to achieve compliance with the requirement set forth herein.

(8) In the event a new methodology relating to PPE in hospitals is developed, including but not limited to a methodology by the U.S. Department of Health & Human Services, and the Commissioner determines that such alternative methodology is appropriate for New York hospitals and will adequately protect hospital staff and patients, the Commissioner shall amend this subdivision to reflect such new methodology.

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f) (1) The nursing home shall 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 and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 1.5; and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 1.4.

(v) For the purposes of this paragraph, the term "applicable positivity rate" shall mean the greater of the following positivity rates:

(a) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period April 26, 2020 through May 20, 2020; or

(b) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period January 3, 2021 through January 31, 2021; or

(c) 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate, as reported to the Department, during the periods April 26, 2020 through May 20, 2020 and January 3, 2021 through January 31, 2021.

(d) In the case of nursing homes previously designated by the Department as a COVID-positive only facility, the term “applicable positivity rate” shall be as defined in clause (c) of this subparagraph.

(3) A nursing home shall be considered to possess and maintain the required PPE if:

(i) it maintains all PPE on-site; or

(ii) it maintains PPE off-site, provided that the off-site storage location is within New York State, can be accessed by the nursing home within at least 24 hours, and the nursing home maintains at least a 10-day supply of all required PPE on-site, as determined by the calculations set forth in paragraph (2) of this subdivision. A nursing home may enter into an agreement with a vendor to store off-site PPE, provided that such agreement requires the vendor to maintain unduplicated, facility-specific stockpiles, the vendor agrees to maintain at least a 60-day supply of all required PPE (less the amount that is stored on-site at the facility), and the PPE is accessible by the facility 24 hours a day, 7 days a week, year round. In the event the Department finds a nursing home has not maintained the required PPE stockpile, it shall not be a defense that the vendor failed to maintain the supply.

(iii) Any PPE stored outside of New York State shall not count toward the facility’s required 60-day stockpile.

(4) The Department shall determine the nursing home’s average census annually, by January 1st of each year, and shall communicate such determination to each facility. Nursing homes shall

have 90 days to come into compliance with the new PPE stockpile requirements, as set forth in paragraph (2) of this subdivision, following such determination by the Department.

(5) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers, and providers are strongly encouraged to rotate inventory through regular usage and replace what has been used in order to ensure a consistent readiness level and reduce waste. Expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(6) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the nursing home's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the nursing home with a fourteen day grace period, solely for a nursing home's first violation of this section, to achieve compliance with the requirement set forth herein.

(7) In the event a new methodology relating to PPE in Residential Health Care Facilities is developed, including but not limited to a methodology by the U.S. Department of Health & Human Services, and the Commissioner determines that such alternative methodology is appropriate for New York nursing homes and will adequately protect facility staff and patients, the Commissioner shall amend this subdivision to reflect such new methodology.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout

the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile.

Based on the foregoing, the Department has made the determination that this regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the

Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are strongly encouraged to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time and reduce waste. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a general hospital or nursing home, in which case costs will be the same as costs for private entities.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

General hospitals and nursing homes operated by local governments will be affected and will be subject to the same requirements as any other general hospital licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that general hospitals and nursing homes have adequate stockpiles of PPE necessary to protect hospital staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at hospitals.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a general hospital or a nursing home. Currently there are five general hospitals in New York that employ less than 100 staff and qualify as small businesses, and there are 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all general hospitals and nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each covered facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are strongly encouraged to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby

helping to balance facility expenditures over time and reduce waste. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

The Department contacted hospital and nursing home associations, individual hospitals and health systems, and health care labor unions for input regarding these regulations and the

underlying methodology. Input from these stakeholders has been incorporated into the regulations.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 44 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2020 (<https://www.census.gov/quickfacts/>).

Approximately 17% of small health care facilities are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2020.

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

There are 47 general hospitals located in rural areas as well as several licensed nursing homes.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

These regulations require all general hospitals and nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time and reduce waste. Further, in the event of an emergency

need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

The Department contacted hospital and nursing home associations, individual hospitals and health systems, and health care labor unions for input regarding these regulations and the

underlying methodology, including associations representing facilities in rural areas of the State.
Input from these stakeholders has been incorporated into the regulations.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803 of the Public Health Law, section 405.19 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Paragraph (5) of subdivision (c) of section 405.19 is amended to read as follows:

(5) (i) The emergency service shall provide for the identification, assessment and referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders, as that term is defined in section 1.03 of the Mental Hygiene Law, as described in subdivision (f) of section 405.9 of this Part.

(ii) The emergency service shall develop and implement policies and procedures for the identification, assessment and referral of patients with behavioral health presentations, including:

(a) The review of records, if any, in any available information network databases, including the Psychiatric Services and Clinical Knowledge Enhancement System (PSYCKES), the Statewide Health Information Network for New York (SHIN-NY), and the Prescription Monitoring Program (PMP).

(b) With the patient's consent, identifying and contacting the individual's family members or close friends who interact with the patient to obtain collateral information, including any psychiatric advance directive.

(c) Screening for suicide risk, which shall require positive screens be followed by a suicide risk assessment by a licensed professional trained in assessing suicide risk.

(d) Screening for violence risk, which shall include a process for subsequent assessment

and intervention in the case of a positive screen. As part of the screening, all patients must be asked about access to firearms or other weapons.

(e) Screening to determine whether an individual has complex needs. Social determinants must be considered in such discharge planning. For purposes of this paragraph, “individual with complex needs” shall have the meaning as determined by the Commissioner of Mental Health in Title 14 of the NYCRR.

(iii) In general hospitals with inpatient psychiatric units under 14 NYCRR Part 580, to accomplish adequate discharge planning for individuals with complex needs in need of post emergency treatment or services, the emergency service shall develop and implement policies and procedures for the discharge of an individual with complex needs, including:

(a) With the patient’s consent, sending a discharge summary detailing the presenting mental health history, hospital course, and other relevant information to outpatient, residential, or long-term care treatment programs.

(b) Referring patients to care management programs or coordinating discharge planning with care managers in such programs.

(c) Confirming an appointment for psychiatric aftercare with an identified provider within seven calendar days following discharge. If, after making diligent efforts, a hospital cannot identify an aftercare provider with an available appointment within seven calendar days, the hospital shall document its efforts and schedule the appointment for as soon as possible thereafter. Individuals who are leaving the hospital against medical advice, or who state they do not wish to receive aftercare services, must be offered information about available treatment options.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high-quality health services at a reasonable cost.

Current Requirements:

General hospital emergency services are required by 10 NYCRR § 405.19(c)(7), in conjunction with the discharge planning program of the hospital, to develop policies and procedures that specify the actions to be taken, and the appropriate contact agencies and individuals to accomplish adequate discharge planning for persons in need of post emergency treatment or services, but not in need of inpatient hospital care. A general hospital emergency department must refer emergency department patients for appropriate follow-up care after discharge from the hospital, including individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders. However, the current regulations do not specifically reference discharges of patients with other behavioral health presentations and complex needs from the emergency department.

Needs and Benefits:

The proposed rule will require general hospital emergency services to develop policies and procedures for intake and discharge of patients with behavioral health presentations. The proposed rule will also add new screening requirements for risk of suicide and violence.

In addition, emergency departments in hospitals with inpatient psychiatric units must follow a more person-centered discharge plan for patients with complex needs. To accomplish adequate discharge planning for these individuals, general hospitals with inpatient psychiatric units must create and implement a discharge plan that addresses the patient's complex needs. These changes ensure that discharge plans will address the post-emergency needs of the patient, including confirmation of appointments for psychiatric follow-up after a hospital visit, moving clinicians away from treating only the medical emergency.

These new requirements for emergency departments will help improve patient outcomes, reduce the risk of post-discharge self-harm and violence, and reduce the risk of readmission and disconnection from care.

COSTS:**Costs to Private Regulated Parties:**

The new screening requirements will increase staffing needs to accomplish this screening. Hospitals may need to hire more social workers, discharge planners, and administrative support staff to implement discharge plans that address the patient's complex needs. Cost to the regulated parties will be dependent upon the number of staff hired and the prevalent wages in the community where the regulated party is located. It is estimated that these costs will range from \$500k per year for a small hospital, to up to \$2.5M a year for a large

hospital. The Department will provide guidance to hospitals and will work with hospitals and hospital associations on the development of policies and procedures to implement the requirements of this regulation.

Costs to Local Government:

There are 13 hospitals owned by counties and municipalities which will be affected by this regulation and the costs associated with it. If the regulated party is owned by a local government, the costs will be comparable to the costs to private regulated parties.

Costs to the Department of Health:

It is estimated that at least 100 new complaints per year will be received after the implementation of this regulation. These complaints will result in approximately 75 onsite investigations at a cost of approximately \$2.1M per year to the Department. This cost considers the number of hours that will be incurred by the surveillance team to investigate the complaint, collaborate with the Office of Mental Health (OMH) if needed, write up the statement of deficiency and review the plans of correction.

Costs to Other State Agencies:

OMH will also incur costs if they perform investigations into complaints and issues alleged or identified.

Local Government Mandate:

Hospitals owned by counties and municipalities are required to comply with the

requirements of this regulation.

Paperwork:

General hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. Therefore, the proposed regulations increase their paperwork to the extent that existing policies and procedures need to be updated to conform to these regulations.

Duplication:

While existing regulations require hospitals to make appropriate referrals, those regulations do not specifically reference patients with behavioral health presentations and complex needs. There otherwise are no relevant State regulations which duplicate, overlap, or conflict with the proposed regulations.

Alternatives:

The Office of Mental Health and the Department on Health, on October 20, 2023, issued joint guidance regarding evaluation and discharge practices for individuals who present with behavioral health conditions within psychiatric inpatient programs, emergency departments, and Comprehensive Psychiatric Emergency Programs (CPEPs). The Department opted to codify the guidance through these regulations, in part, for general hospitals with psychiatric inpatient programs to further strengthen evaluation and discharge requirements and to help improve patient outcomes, reduce the risk of post-discharge self-harm and violence, and reduce the risk of

readmission and disconnection from care. This regulation is necessary to turn provisions in the guidance into rules that general hospitals must follow.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed regulatory provisions related to discharges from hospital emergency departments will apply to all general hospitals in New York State. This proposal will not impact local governments unless they operate one of the 13 general hospitals owned by counties and municipalities. Such local governments will be affected by this regulation and the costs associated with it. The general hospitals with emergency departments required to comply with these regulations are not small businesses.

Compliance Requirements:

These regulations will require general hospitals to develop new policies and procedures for intake and discharge of patients with behavioral health presentations and complex needs from emergency departments. Hospitals will be required to train their licensed and certified clinical staff members in such policies and procedures.

Professional Services:

While the current regulations do not specifically refer to intake and discharge of patients with behavioral health presentations or complex needs from hospital emergency departments, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. Hospitals are not likely to need outside professional services to comply with the requirements of this regulation.

Compliance Costs:

While the current regulations do not specifically refer to intake or discharge of patients with behavioral health presentations or complex needs from emergency departments, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training encompass the policies and procedures for patients who have behavioral health presentations or complex needs. However, these efforts are expected to assist individuals in obtaining treatment that will help them avoid future emergency room visits and hospital admissions. Costs to regulated parties will be dependent upon the number of staff hired and the prevalent wages in the community where the regulated party is located. It is estimated that these costs will range from \$500k per year for a small hospital, to up to \$2.5M a year for a large hospital. The Department will provide guidance to hospitals and will work with hospitals and hospital associations on the development of policies and procedures to implement the requirements of this regulation.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. While existing regulations do not specifically refer to intake or discharge of patients with behavioral health presentations or complex needs from emergency departments, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care.

Minimizing Adverse Impact:

The regulations afford general hospitals flexibility to develop and implement their own policies and procedures that meet the minimum requirements of the regulations, which is expected to minimize the costs of compliance. In addition, if after making diligent efforts, a hospital cannot identify an aftercare provider with an available appointment within seven calendar days, the regulations provide flexibility to allow a hospital to document its efforts and schedule the appointment for as soon as possible thereafter.

Small Business and Local Government Participation:

Development of these regulations included input from organizations including those whose members include general hospitals that are operated by local governments or that constitute small businesses. The essential requirements of this regulation were announced in the Governor's State of the State address on January 9, 2024. This regulation was on the agenda of the meeting of the Public Health and Health Planning Council (PHHPC) that took place on February 8, 2024, in accordance with the Open Meetings Law. At that meeting, the regulation was reviewed and discussed by PHHPC members. In addition, the public, including the affected parties to this regulation, were afforded an opportunity to ask questions and provide comments.

In addition, there were conference calls made to associations representing the hospital industry to inform them of the regulation and to provide an opportunity to ask questions.

The regulation must be presented a second time at an open meeting of PHHPC, with another opportunity for public comment, and the regulation cannot be established unless and until PHHPC approves adoption of the regulation.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 44 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2020 (<https://www.census.gov/quickfacts/>).

There are 55 general hospitals in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2020.

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

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

The proposed regulation is applicable to those general hospitals located in rural areas and is expected to impose only minimal costs upon hospitals, which are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. However, the proposed regulatory requirements can be incorporated into existing processes, which should help to minimize the administrative burden on these entities.

Costs:

While the current regulations do not specifically refer to discharges of patients with behavioral health presentations or complex needs from hospitals emergency departments, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training encompasses the policies and procedures for patients with behavioral health presentations or complex needs discharged from emergency departments. However, these efforts are expected to assist individuals in obtaining treatment that will help them avoid future emergency room visits and hospital admissions. Costs to regulated parties will be dependent upon the number of staff hired and the prevalent wages in the community where the regulated party is located. It is estimated that these costs will range from \$500k per year for a small hospital, to up to \$2.5M a year for a large hospital. The Department will provide guidance to hospitals and will work with hospitals and hospital associations on the development of policies and procedures to implement the requirements of this regulation.

Minimizing Adverse Impact:

The regulations afford general hospitals flexibility to develop and implement their own policies and procedures that meet the minimum requirements of the regulations, which is expected to minimize the costs of compliance. In addition, if after making diligent efforts, a hospital cannot identify an aftercare provider with an available appointment within seven calendar days, the regulations provide flexibility to allow a hospital to document its efforts and schedule the appointment for as soon as possible thereafter.

Rural Area Participation:

Development of these regulations included input from organizations including those that include as members general hospitals located in rural areas.

The essential requirements of this regulation were announced in the Governor's State of the State address on January 9, 2024. This regulation was on the agenda of the meeting of the Public Health and Health Planning Council (PHHPC) that took place on February 8, 2024, in accordance with the Open Meetings Law. At that meeting, the regulation was reviewed and discussed by PHHPC members. In addition, the public, including the affected parties to this regulation, were afforded an opportunity to ask questions and provide comments.

In addition, there were conference calls made to associations representing the hospital industry to inform them of the regulation and to provide an opportunity to ask questions.

The regulation must be presented a second time at an open meeting of PHHPC, with another opportunity for public comment, and the regulation cannot be established unless and until PHHPC approves adoption of the regulation.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

SUMMARY OF EXPRESS TERMS

Public Health Law sections 206(18-a)(d) and 2816 give the Department broad authority to promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for New York (SHIN-NY).

These amendments support the development of the statewide data infrastructure, thereby increasing interoperability and providing the flexibility necessary for the SHIN-NY to adapt in a constantly evolving technological environment. The goal of these amendments is to ensure consistency across the SHIN-NY in how SHIN-NY participants connect and exchange data, to support public health during emergencies and to assist with Medicaid reporting in support of the Medicaid program's Social Security Act Section 1115 waiver (see 42 USC § 1315).

In order to promote efficiency through the development of network-wide policies, processes, and solutions, these amendments create a process to develop the statewide data infrastructure that will facilitate the exchange of data among SHIN-NY participants. Relevant activities required of the Department or its contracted vendor under the amendments include enhancement of the data matching process for patient demographic information submitted by SHIN-NY participants, creation of a statewide provider directory to serve as a standardized resource for resolving provider and facility identities, development of a statewide patient consent management system, and the aggregation of data from SHIN-NY participants in a secure statewide repository.

In addition, under these regulations, the Department will create a statewide common participation agreement to be used by each qualified entity and which will allow SHIN-NY participants to connect to the statewide data infrastructure by agreeing to participate in the SHIN-NY and adhering to SHIN-NY policy guidance. This will allow patient data to be

contributed to the statewide data infrastructure and used for statewide reporting and analytics for public health surveillance and Medicaid purposes, to the extent authorized by law.

This will further promote consistency and efficiency across the SHIN-NY by requiring the qualified entities to use and accept network-wide agreements and patient consent decisions. The statewide common participation agreement will eliminate the current variation in the terms and conditions applicable to participating in the SHIN-NY through one qualified entity versus another. The amendments also reduce ambiguity by requiring qualified entities to honor and implement patient consent decisions that authorize data access by treating providers across the network, regardless of which qualified entity such providers have contracted with, to participate in the SHIN-NY.

This amendment will further the Legislature's intent under chapter 54 of the Laws of 2023, which appropriated an additional \$2.5 million "for modernizing health reporting systems." By clarifying the data reporting and aggregation responsibilities applicable to the qualified entities, the proposed amendments will transform the SHIN-NY into a functional resource for the analysis and reporting of statewide health information for authorized public health and health oversight purposes.

Pursuant to the authority vested in the Commissioner of Health and the Public Health and Health Planning Council by sections 201, 206(1) and (18-a)(d), 2803, 2816, 3612, 4010, 4403, and 4712 of the Public Health Law, Part 300 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to read as follows:

Section 300.1 Definitions. For the purposes of this Part, these terms shall have the following meanings:

- (a) “*Statewide Health Information Network for New York*” or “*SHIN-NY*” means the technical infrastructure and the supportive policies and agreements that:
 - (i) make possible the electronic exchange of clinical information among [qualified entities and qualified entity] SHIN-NY participants for authorized purposes to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and health oversight activities, while protecting patient privacy and ensuring data security; and
 - (ii) enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records, personal health records, health care claims, payment and other administrative data, and public health information systems, while protecting patient privacy and ensuring data security.
- (b) “*Qualified entity*” means a not-for-profit regional health information organization or other entity that has been certified under section 300.4 of this Part.
- (c) “[*Qualified entity*] SHIN-NY participant” means any health care provider, health

plan, governmental agency or other type of entity or person that has executed a statewide common participation agreement with a qualified entity or with the entity that facilitates their connection to the SHIN-NY statewide data infrastructure, pursuant to which it has agreed to participate in the SHIN-NY.

* * *

- (g) “*Patient information*” means health information that is created or received by a [qualified entity] SHIN-NY participant and relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual, and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

* * *

- (m) “*Statewide common participation agreement*” means a common agreement, developed using a statewide collaboration process, consistent with any minimum standards set forth in the SHIN-NY policy guidance and approved by the New York State Department of Health, that is used statewide by each qualified entity or by SHIN-NY participants, allowing them to connect to the SHIN-NY statewide data infrastructure either directly or through a contractor, and pursuant to which SHIN-NY participants agree to participate in the SHIN-NY and adhere to SHIN-NY policy guidance, including but not limited to causing patient data to be contributed to the statewide data infrastructure and authorizing the use of patient data for statewide reporting and analytics for public health surveillance and Medicaid purposes, in accordance with SHIN-NY policy guidance.

(n) “Statewide data infrastructure” means the information technology infrastructure provided by the New York State Department of Health, either directly or through contract, to support the aggregation of data provided by qualified entities and SHIN-NY participants, statewide reporting and analytics for public health surveillance and Medicaid purposes, consistent with applicable law.

Section 300.2 Establishing the SHIN-NY. The New York State Department of Health shall:

- (a) oversee the implementation and ongoing operation of the SHIN-NY;
- (b) implement the infrastructure and services to support the private and secure exchange of health information among [qualified entities and qualified entity] SHIN-NY participants;
- (c) provide, either directly or through contract, statewide data infrastructure and any other SHIN-NY services that the New York State Department of Health deems necessary to effectuate the purposes of this Part;
- (d) administer the statewide collaboration process and facilitate the development, regular review and [update] amendment of SHIN-NY policy guidance;
- [(d)](e) perform regular audits, either directly or through contract, of qualified entity and SHIN-NY participant functions and activities as necessary to ensure the quality, security and confidentiality of data in the SHIN-NY;
- [(e)](f) provide [technical services], either directly or through contract, [to ensure the quality, security and confidentiality of data in the SHIN-NY;] strategic leadership on the use of the statewide data infrastructure to ensure health information exchange services are efficiently deployed in the SHIN-NY to support:

- (1) the exchange of data among SHIN-NY participants;
- (2) the matching of patient demographic information submitted by SHIN-NY participants;
- (3) a statewide provider directory;
- (4) a statewide consent management system; and
- (5) aggregation of data from SHIN-NY participants in a statewide repository;

[(f)](g) assess qualified entity and SHIN-NY participant participation in the SHIN-NY and, if necessary, suspend a qualified [entity's] entity or SHINY-NY participant's access to or use of the SHIN-NY, as provided in the statewide common participation agreement, or when it reasonably determines that the qualified entity or SHINY-NY participant has created, or is likely to create, an immediate threat of irreparable harm to the SHIN-NY, to any person accessing or using the SHIN-NY, or to any person whose information is accessed or transmitted through the SHIN-NY;

[(g)](h) publish reports on health care provider participation and usage, system performance, data quality, the qualified entity certification process, and SHIN-NY security;

[(h)](i) take such other actions, including but not limited to the convening of appropriate advisory and stakeholder workgroups, as may be needed to promote development of the SHIN-NY;

(j) approve the statewide common participation agreement under which SHIN-NY participants supply patient information to the SHIN-NY using qualified entities or the entity that facilitates their connection to the statewide data infrastructure, and qualified entities supply patient information using the statewide data infrastructure.

Any such designated contractor must be the “business associate,” as defined in 42 USC § 17921, of any SHIN-NY participant that supplies patient information and is a health care provider, and must be a qualified service organization of any SHIN-NY participant that supplies patient information and is an alcohol or drug abuse program required to comply with federal regulations regarding the confidentiality of alcohol and substance abuse patient records. 42 USC § 17921, effective February 17, 2009, which has been incorporated by reference in this Part, has been filed in the Office of the Secretary of State of the State of New York. The section of the United States Code incorporated by reference may be examined at the Records Access Office, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237 or can be directly obtained from the Office of the Law Revision Counsel of the United States House of Representatives.

Section 300.3 Statewide collaboration process and SHIN-NY policy guidance.

- (a) SHIN-NY policy guidance. The New York State Department of Health shall establish SHIN-NY policy guidance as set forth below:
 - (1) The New York State Department of Health shall establish [or designate a policy committee] a statewide collaboration process, which may include the designation of committees, representing qualified entities, SHIN-NY participants, relevant stakeholders, and healthcare consumers to make recommendations on SHIN-NY policy guidance and standards.
 - (2) Policy committee agendas, meeting minutes, white papers and recommendations shall be made publicly available.

- (3) The New York State Department of Health shall consider SHIN-NY policy guidance recommendations made through the statewide collaboration process and may accept or reject SHIN-NY policy guidance recommendations at its sole discretion.
- (b) Minimum contents of SHIN-NY policy guidance. SHIN-NY policy guidance standards shall include, but not be limited to policies and procedures on:
- (1) privacy and security;
 - (2) monitoring and enforcement;
 - (3) [minimum] core service requirements;
 - (4) organizational characteristics of qualified entities; [and]
 - (5) qualified entity certification;
 - (6) technical standards for interoperability and data sharing among SHIN-NY participants, qualified entities, and the New York State Department of Health or its designated contractor; and
 - (7) requirements and procedures for the disclosure of data, using the statewide data infrastructure, to the New York State Department of Health or its designated contractor, and for the use and re-disclosure of such data to support statewide reporting and analytics for public health surveillance and Medicaid purposes.

Section 300.4 Qualified entities.

- (a) Each qualified entity shall:
 - (1) maintain and operate a network of [qualified entity] SHIN-NY participants

- seeking to securely exchange patient information;
- (2) connect to the statewide data infrastructure to allow [qualified entity] SHIN-NY participants to exchange information with [qualified entity] SHIN-NY participants of other qualified entities and with the New York State Department of Health or its designated contractor to support statewide reporting and analytics for public health surveillance and Medicaid purposes;
 - (3) submit to regular audits of qualified entity functions and activities by the New York State Department of Health or its designated contractor as necessary to ensure the quality, security, and confidentiality of data in the SHIN-NY;
 - (4) ensure that data from [qualified entity] SHIN-NY participants is only made available through the SHIN-NY in accordance with applicable law;
 - (5) enter into agreements, including the statewide common participation agreement, with [qualified entity] SHIN-NY participants that supply patient information to, or access patient information from, the qualified entity. A qualified entity must be the “business associate,” as defined in 42 USC § 17921, of any [qualified entity] SHIN-NY participant that supplies patient information and is a health care provider, and must be a qualified service organization of any [qualified entity] SHIN-NY participant that supplies patient information and is an alcohol or drug abuse program required to comply with Federal regulations regarding the confidentiality of alcohol and substance abuse patient records;
 - (6) allow participation of all health care providers in the geographical area

served by the qualified entity that are seeking to become [qualified entity] SHIN-NY participants, list the names of such [qualified entity] SHIN-NY participants on its website, and make such information available at the request of patients;

(7) submit data, including patient information, using the statewide data infrastructure, to the New York State Department of Health or its designated contractor, according to specifications provided by the New York State Department of Health;

(8) submit reports on health care provider participation and usage, system performance and data quality, in a format determined by the New York State Department of Health;

~~[(8)]~~(9)adopt policies and procedures to provide patients with access to their own patient information that is accessible directly from the qualified entity, except as prohibited by law;

~~[(9)]~~(10)implement policies and procedures to provide patients with information identifying [qualified entity] SHIN-NY participants that have obtained access to their patient information using the qualified entity, except as otherwise prohibited by law.

(b) Each qualified entity shall have procedures and technology:

(1) to exchange patient information for patients of any age, consistent with all applicable laws regarding minor consent patient information;

(2) to allow patients to approve and deny access to specific [qualified entity] SHIN-NY participants; and

- (3) to honor a minor's consent or revocation of consent to access minor consent patient information.
- (c) Each qualified entity shall provide [the following minimum set of] such core services to [qualified entity] SHIN-NY participants as required by the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part. Such core services shall include, but not be limited to:
- (1) allow [qualified entity] SHIN-NY participants to search existing patient records on the network;
 - (2) make available to [qualified entity] SHIN-NY participants and public health authorities a clinical viewer to securely access patient information;
 - (3) [permit secure messaging among health care providers;
 - (4)] provide tracking of patient consent;
 - [(5) provide notification services to establish subscriptions to pre-defined events and receive notifications when those events occur;
 - (6)](4) provide identity management services to authorize and authenticate users in a manner that ensures secure access;
 - (5) submit data using the statewide data infrastructure, to the New York State Department of Health or its designated contractor, to support the aggregation of data, statewide reporting and analytics for public health surveillance and Medicaid, consistent with applicable law;
 - [(7)](6) support Medicaid and public health reporting to public health authorities;
 - [(8) deliver diagnostic results and reports to health care providers.]
 - (7) provide SHIN-NY participants with appropriate access to data using the

statewide data infrastructure.

- (d) The New York State Department of Health shall certify qualified entities that demonstrate that they meet the requirements of this section to the satisfaction of the New York State Department of Health. The New York State Department of Health may, in its sole discretion, select a certification body to review applications and make recommendations to the New York State Department of Health regarding certification. The New York State Department of Health shall solely determine whether to certify qualified entities. To be certified, a qualified entity must demonstrate that it meets the following requirements:

* * *

- (3) The qualified entity has technical infrastructure, privacy and security policies and processes in place to: manage patient consent for access to health information consistent with section 300.5 of this Part and the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part; support the authorization and authentication of users who access the system; audit system use; and implement remedies for breaches of patient information.

* * *

Section 300.5 Sharing of Patient Information.

- (a) General standard. [Qualified entity] SHIN-NY participants may only exchange patient information as authorized by law and consistent with their statewide common participation agreements [with qualified entity participants]. Under section

18(6) of the Public Health Law, individuals who work for a qualified entity or the entity that facilitates SHIN-NY participants' connection to the statewide data infrastructure are deemed personnel under contract with a health care provider that is a [qualified entity] SHIN-NY participant. As such, a [qualified entity] SHIN-NY participant may disclose to such a qualified entity necessary patient information without a written authorization from the patient of the [qualified entity] SHIN-NY participant. [Qualified entity] SHIN-NY participants may, but shall not be required to, provide patients the option to withhold patient information, including minor consent patient information, from the SHIN-NY. Except as set forth in paragraph (b)(2) or subdivision (c) of this section, a qualified entity shall only allow access to patient information by [qualified entity] SHIN-NY participants with a written authorization from:

- (1) the patient; or
 - (2) when the patient lacks capacity to consent, from:
 - (i) another qualified person under section 18 of the Public Health Law;
 - (ii) a person with power of attorney whom the patient has authorized to access records relating to the provision of health care under General Obligations Law article 5, title 15; or
 - (iii) a person authorized pursuant to law to consent to health care for the individual.
- (b) Written authorization.
- (1) Written authorizations must [specify to whom disclosure is authorized] be obtained using a statewide form of consent, approved by the New York State

Department of Health, that allows patients to approve and deny access to information in the SHIN-NY by SHIN-NY participants.

- (i) Patient information may not be disclosed to persons who, or entities that, become [qualified entity] SHIN-NY participants subsequent to the execution of a written authorization unless:
 - (a) the name or title of the individual or the name of the organization are specified in a new written authorization; or
 - (b) the patient's written authorization specifies that disclosure is authorized to persons or entities becoming [qualified entity] SHIN-NY participants subsequent to the execution of the written authorization and the qualified entity has documented that it has notified the patient, or the patient has declined the opportunity to receive notice, of the persons or entities becoming [qualified entity] SHIN-NY participants subsequent to the execution of the written authorization.
 - (ii) Any written authorization shall remain in effect until it is revoked in writing or explicitly superseded by a subsequent written authorization. A patient may revoke a written authorization in writing at any time by following procedures established by the qualified entity consistent with the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part.
- (2) Qualified entities shall permit access to all of a patient's information by all persons or entities authorized to access information in the SHIN-NY, or any

other general designation of who may access such information, after consent is obtained.

(3) A minor's parent or legal guardian may authorize the disclosure of the minor's patient information, other than minor consent patient information.

[(3)](4) Minor consent patient information.

(i) In general, a minor's minor consent patient information may be disclosed to a [qualified entity] SHIN-NY participant if the minor's parent or legal guardian has provided authorization for that [qualified entity] SHIN-NY participant to access the minor's patient information through the SHIN-NY. Such access shall be deemed necessary to provide appropriate care or treatment to the minor. However, if federal law or regulation requires the minor's authorization for disclosure of minor consent patient information or if the minor is the parent of a child, has married or is otherwise emancipated, the disclosure may not be made without the minor's authorization.

(ii) In no event may a [qualified entity] SHIN-NY participant disclose minor consent patient information to the minor's parent or guardian without the minor's authorization.

[(4)](5) Minor consent patient information includes, but is not limited to, patient information concerning:

* * *

(x) emergency care as provided in section 2504(4) of the Public Health

Law[.];

- (xi) treatment provided with the consent of no person other than the minor patient, where the patient is a homeless youth as defined in section 532-A of the executive law, or receives services at an approved runaway and homeless youth crisis services program or transitional independent living support program as defined in section 532-A of the executive law.

* * *

Section 300.6 Participation of health care facilities.

- (a) [One year from the effective date of this regulation, general hospitals as defined in subdivision ten of section two thousand eight hundred one of the Public Health Law, and two years from the effective date of this regulation, all health] Health care facilities as defined in section 18(c)(1) of the Public Health Law, including those who hold themselves out as urgent care providers[, utilizing certified electronic health record technology under the federal Health Information Technology for Economic and Clinical Health Act (HITECH),] must become [qualified entity] SHIN-NY participants in order to connect to the SHIN-NY through a qualified entity, and must allow private and secure bi-directional access to patient information by other [qualified entity] SHIN-NY participants authorized by law to access such patient information. [Bi-directional] As used in this subdivision, bi-directional access means that a [qualified entity] SHIN-NY participant has the technical capacity to upload its patient information to the qualified entity so that it is accessible to other [qualified entity] SHIN-NY participants authorized to access the

patient information and that the [qualified entity] SHIN-NY participant has the technical capacity to access the patient information of other [qualified entity] SHIN-NY participants from the qualified entity when authorized to do so, consistent with the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part.

(b) All health care facilities required to become SHIN-NY participants pursuant to subdivision (a) of this section must supply patient information to the statewide data infrastructure.

(c) The New York State Department of Health may waive the requirements of [subdivision] subdivisions (a) or (b) of this section for health care facilities that demonstrate, to the satisfaction of the New York State Department of Health:

- (1) economic hardship;
- (2) technological limitations or practical limitations to the full use of certified electronic health record technology that are not reasonably within control of the health care provider; [or]
- (3) other exceptional circumstances demonstrated by the health care provider to the New York State Department of Health as the Commissioner may deem appropriate; or
- (4) the facility has the technical capacity for private and secure bi-directional access, executes a statewide common participation agreement, connects to the SHIN-NY and supplies patient information to the statewide data infrastructure in accordance with this Part and the SHIN-NY policy guidance. As used in this paragraph, bi-directional access means that a SHIN-NY participant has the technical capacity to upload its patient

information to the SHIN-NY so that it is accessible to other SHIN-NY participants authorized to access the patient information and that the SHIN-NY participant has the technical capacity to access the patient information of other SHIN-NY participants when authorized to do so, consistent with the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 206(18-a)(d) authorizes the Commissioner to make such rules and regulations as may be necessary to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records, personal health records, health care claims, payment and other administrative data and public health information systems, while protecting patient privacy and ensuring data security. In addition, PHL sections 201, 206(1), 2803, 2816, 3612, 4010, 4403, and 4712 authorize the Commissioner to make such rules and regulations as may be necessary to effectuate the provisions and purposes of PHL Articles 28 (hospitals), 36 (home care services), 40 (hospice), 44 (health maintenance organizations) and 47 (shared health facilities) and provide additional authority for the Commissioner to create and make use of the Statewide Health Information Network for New York (SHIN-NY).

Legislative Objectives:

The explicit legislative objective of PHL § 206(18-a) is the promotion of widespread, non-duplicative interoperability among disparate health information systems and data types, including electronic health records, personal health records, health care claims, payment and other administrative data and public health information systems, while protecting patient privacy and ensuring data security. Such interoperability is intended to improve patient outcomes, minimize unnecessary service utilization, and reduce health care costs by fostering efficiency and supporting care coordination.

Existing regulations at 10 NYCRR Part 300 advanced these legislative objectives by establishing requirements for the regional health information organizations (RHIOs) that

were created as health information exchanges in New York State. Under the provisions of Part 300, the RHIOs became the qualified entities (QEs) that facilitate the exchange of health information in the SHIN-NY. These regulatory amendments will further the legislative intent by making it easier for health care providers, health plans, and governmental agencies to become SHIN-NY participants and access the SHIN-NY through the use of a statewide common participation agreement, while ensuring patient privacy and data security.

Needs and Benefits:

Pursuant to the current regulation, responsibility for the development and maintenance of SHIN-NY policies and technical infrastructure is divided between the QEs and the Department. In practice, this division of oversight and operational responsibilities has resulted in the deployment of disparate forms, processes, and technology solutions across the network. The proposed amendments are necessary to support the development of the statewide data infrastructure, thereby increasing interoperability and providing the flexibility necessary for the SHIN-NY to adapt in a constantly evolving technological environment. The goal of these amendments is to ensure consistency across the SHIN-NY in how SHIN-NY participants connect and exchange data, and to support the sharing of information for public health purposes, such as the Medicaid program's Social Security Act Section 1115 waiver (see 42 USC § 1315).

In order to promote efficiency through the development of network-wide policies, processes, and solutions, these amendments create a process to develop the statewide data infrastructure that will facilitate the exchange of data among SHIN-NY participants by enhancing the matching of patient demographic information submitted by SHIN-NY

participants, with a statewide provider directory, and statewide consent management system.

In addition, under these regulations, the Department will create a statewide common participation agreement to be used statewide by each qualified entity whether the participant connects through a qualified entity or directly through the statewide infrastructure. This will enable SHIN-NY participants to connect with the statewide data infrastructure and contribute patient data. Furthermore, the statewide common participation agreement will allow the use of such data for statewide reporting and analytics for public health surveillance and Medicaid purposes, in accordance with SHIN-NY policy guidance.

The regulations will further promote consistency and efficiency across the SHIN-NY by requiring the QEs to use and accept network-wide agreements and patient consent decisions. The statewide common participation agreement will eliminate the current variation in the terms and conditions applicable to participating in the network through one QE versus another. The regulatory amendments will also reduce ambiguity by requiring QEs to honor and implement patient consent decisions that authorize data access by treating providers across the network, regardless of which QE such providers have contracted with to participate in the SHIN-NY.

These amendments will also further the Legislature's intent under chapter 54 of the Laws of 2023, which appropriated an additional \$2.5 million "for modernizing health reporting systems." As the COVID-19 and requirement to use the Hospital Emergency Reporting Data System (HERDS) for crucial public health reporting pandemic demonstrated, the current framework for SHIN-NY data collection and reporting is insufficient to enable timely analysis and decision making in situations involving an

emergent public health concern. By providing for a statewide data infrastructure and explicitly requiring all SHIN-NY participants to submit data for aggregation, these amendments will ensure that facilities and the Department are not required to navigate and implement an ad-hoc or emergency data collection procedure during future public health scenarios of urgent concern. Additionally, it will enable more efficient reporting for healthcare facilities.

Moreover, interoperability and analytics based on data from the SHIN-NY will be a key component of the Department's mandatory reporting in relation to its Medicaid Section 1115 demonstration project and associated waiver. Whereas the current regulation merely authorizes the QEs to disclose patient information without written consent to a public health authority or health oversight agency, the proposed amendments will require the QEs and SHIN-NY participants to submit data using the statewide data infrastructure, both on a regular basis and in response to ad-hoc requests from the Department or its designated contractor. By clarifying the data reporting and aggregation responsibilities applicable to the QEs and the permissible uses of such data by the Department or its designated contractor, the proposed amendments will transform the SHIN-NY into a functional resource for the analysis and reporting of statewide health information for authorized public health and health oversight purposes.

Beyond supporting interoperability and consistency across the network for QEs and SHIN-NY participants and clarifying the data reporting obligations of both, these regulations also address the need to allow for providers to connect directly to the statewide data infrastructure and participate in SHIN-NY data exchange and data reporting without a qualified entity acting as intermediary. To that end, the definition of "qualified entity

participant” has been changed to refer to “SHIN-NY participants,” which will account for the possibility that provider organizations may participate in the SHIN-NY without contracting with one of the qualified entities. In such circumstances, the provider organization would enter into the statewide common participation agreement with the Department or its designated contractor, under which the organization would agree to adhere to applicable SHIN-NY policies and provide data to other SHIN-NY participants and the Department for data reporting and aggregation. To further support such direct connection to the statewide data infrastructure, subdivision 300.6(c)(4) is amended to exempt a health care facility that demonstrates “the technical capacity for private and secure bi-directional access, executes a statewide common participation agreement, and connects to the SHIN-NY using the statewide data infrastructure” from the requirement to enter into a participation agreement with a qualified entity. These changes reflect the fact that health information technology has rapidly advanced since the inception of the SHIN-NY, to the point where most larger health systems now possess the technical capacity to connect to and retrieve data from a statewide network without the assistance of a dedicated health information exchange partner or may exchange through electronic health record networks established at the national level.

These regulations account for the possibility that the Department, its designated contractor, and/or other types of health care organizations or other national networks might provide data and/or services through the SHIN-NY in the future. Data and services may be provided through the SHIN-NY by the Department, by its designated contractor, or by other SHIN-NY participants that meet the minimum technical, security, privacy, organizational and other requirements set forth by the Department. Along with the provisions that

authorize providers to connect directly to the SHIN-NY, this change will support the shift to an ecosystem model for New York's health information system in favor of the current system under which participation is restricted to those organizations that contract and follow the policies of the certified QEs.

Finally, these amendments will promote the development of a statewide provider directory and consent management system, both of which have been longstanding goals for the Department and will contribute substantially to the modernization of New York's health reporting system once implemented.

COSTS

Costs to Private Regulated Parties:

The private parties subject to the proposed amendments are the QEs and SHIN-NY participants. To the extent that any expenditures are necessary by QEs in order to comply with these amendments, such expenditures are expected to continue to be reimbursed using money appropriated to the Department's designated contractor. It is not anticipated that SHIN-NY participants will incur any costs as a result of these amendments. Most regulated facilities are currently connected to the SHIN-NY via a qualified entity. The amendments are also intended to allow the alignment of SHIN-NY interoperability requirements with interoperability requirements from the federal Department of Health and Human Services. By aligning with federal interoperability requirements, this should create more efficiency by leveraging interoperability standards currently built into electronic health records.

Costs to Local Government:

This proposal will not impact local governments unless they operate a health care facility, in which case the impact would be the same as outlined above for private parties.

Costs to the Department of Health:

While there will be costs to build the statewide data infrastructure initially, those costs have already been budgeted. It is anticipated there will be greater efficiency in how technology is deployed in the SHIN-NY. Initial outlays will be funded through a \$2.5million increase in the budget appropriation that occurred in the SFY 2023-2024 budget.

Costs to Other State Agencies:

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

Local Government Mandates:

Health facilities operated by local governments will be required to comply with these amendments in the same manner as other facilities. The regulation is not anticipated to impose any direct costs on SHIN-NY participants, including local health departments.

Paperwork:

No new paperwork requirements would be imposed under the proposed amendments. Any consent forms that are developed will replace current consent forms and deployed can be done electronically. Additionally, there will be less variation in consent forms because of a consistent consent form developed by the Department.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternatives:

An alternative to the proposed regulation would be not to make any amendments to 10 NYCRR Part 300 regulations. However, these amendments are necessary to fulfill the

legislature's objective of creating an efficient statewide health information network that serves as a resource for patients, providers, and public health officials across the State. These regulations are essential to improve the long-term efficacy of the SHIN-NY and therefore the alternative of not making any amendments to the regulation was not considered viable.

Federal Standards:

The proposed amendments do not duplicate or conflict with any federal regulations. These amendments will complement the Office of the National Coordinator for Health Information Technology (ONC) Final Rule implementing certain provisions of the 21st Century Cures Act (85 Fed. Reg. 25642, May 1, 2020), which requires patient information to be accessible under application programming interface (API) requirements and prohibits actions that constitute information blocking. See 42 USC § 300jj-11 et seq.

Compliance Schedule:

The amendments will be effective upon publication of a Notice of Adoption in the New York State Register.

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STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. By having a standard participation agreement across the state, SHIN-NY participants will have a consistent participation agreements that will not vary by region. This should result lower costs compared to current variation across the state.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis for this amendment is not being submitted because the amendment will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. By having a standard participation agreement across the state, SHIN-NY participants will have a consistent participation agreements that will not vary by region. This should result lower costs compared to current variation across the state. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Public Health Law section 2803, sections 405.4 and 405.6 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Paragraph (4) of subdivision (b) of Section 405.4 is amended to read as follows:

The hospital shall have an organized medical staff that operates under bylaws approved by the governing body.

* * *

(b) Organization.

* * *

(4) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidates in accordance with the provisions of this Part and the New York State Public Health Law. Following the initial appointment of medical staff members, the medical staff shall conduct periodic reappraisals of its members, on at least[,] a [biennial] triennial basis.

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

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

* * *

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

(i) the establishment of a medical, dental and podiatric staff privileges review procedure through which credentials, physical and mental capacity, and competence in delivering health care services are reviewed at least [biennially] triennially as part of an evaluation of staff privileges and in accordance with section 405.4 of this Part. These procedures shall include the collection of the following information from a physician, dentist or podiatrist prior to granting or renewing professional privileges or association in any capacity with the hospital:

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

PHL Article 28 assures the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. Specifically, PHL section 2800 specifies that “hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

PHL section 2803(2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Needs and Benefits:

The proposed regulations will benefit Article 28 general hospitals by lengthening the requirement to review the credentials of medical staff from every two years to every three years, which will reduce administrative burdens and provide consistency by aligning with a recent revision by The Joint Commission to its credentialing and privileging standards applied to its Advanced Diagnostic Imaging, Ambulatory Surgical Center, Critical Access Hospital, and Hospital accreditation programs.

Costs for Regulated Entities:

There are no anticipated costs to regulated parties (PHL Article 28 general hospitals), insofar as the proposed regulations will reduce administrative burdens by requiring recredentialing every three years (triennially) instead of every two years (biannually).

Cost to State and Local Government:

There are no anticipated costs to regulated parties, including general hospitals owned and operated by State or Local governments, insofar as the proposed regulations will reduce administrative burdens by requiring recredentialing every three years (triennially) instead of every two years (biannually).

Cost to the Department of Health:

There are no anticipated costs to the Department of Health.

Local Government Mandates:

This regulation does not impose a local government mandate.

Paperwork:

Regulated entities will be required to maintain documentation that they have satisfied the minimum recredentialing review of medical staff as articulated in the proposed regulations.

However, the proposed regulations do not require new or additional paperwork requirements, insofar as existing regulations at 10 NYCRR sections 405.4 and 405.6 currently require Article 28 general hospitals to maintain records relating to their review of medical staff qualifications; the proposed regulations will reduce administrative burdens by requiring recredentialing every three years (triennially) instead of every two years (biannually).

Duplication:

The proposed regulation does not duplicate any federal, state, or local law.

Alternatives:

Alternatives include not amending the regulations or requiring a recredentialing period of a length other than every three years (triennially). However, the Department finds that neither alternative is viable. The proposed regulations align with a recent change by The Joint Commission to revise its credentialing and privileging standards applied to its Advanced Diagnostic Imaging, Ambulatory Surgical Center, Critical Access Hospital, and Hospital accreditation programs. Therefore, the Department finds that the triennial recredentialing timeframe proposed in these regulations—as opposed to the current (biannual) or an alternative timeframe—will provide consistency to regulated facilities, as it will align with standards applied by this national hospital accreditation organization to many of the Article 28 general hospitals in New York State.

Federal Requirements:

Federal Conditions of Participation at 42 CFR 482.22(a)(1) require medical staff to “periodically conduct appraisals of its members.” The federal Centers for Medicare & Medicaid Services (CMS) has stated in a letter to The Joint Commission that “[p]eriodic review would be

consistent with local laws or national practice.” Therefore, the proposed regulatory requirement for triennial reviews is consistent with existing federal regulation.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No Regulatory Flexibility Analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, nor does it require any new reporting, record keeping or other compliance requirements on small businesses or local governments.

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

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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



Project # 231332-C
NYU Langone Hospital-Long Island

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: July 26, 2023

Executive Summary

Description

NYU Langone Hospitals-Long Island (NYULHLI), an existing Article 28, not-for-profit 591-bed medical center requests approval to certify and construct a new Multi-Specialty Ambulatory Surgery Hospital Extension Clinic at 1400 Northern Boulevard in Manhasset (Nassau County). The extension clinic will be certified for Orthopedic Surgery, Podiatric Surgery, General Surgery, Vascular Surgery, and Endoscopic Procedures. The extension clinic will consist of eight (8) Operating Rooms and six (6) procedure rooms, and all associated support spaces. John Allendorf, MD will serve as the Medical Director.

NYULHLI is experiencing increased demand for surgical services at its Garden City extension clinic, the onsite Ambulatory Surgery Unit, and the Main Operating Room. Completion of this project is expected to reduce procedures at the main campus, expand block times for physicians, and create shorter patient wait times. NYULHLI will be able to provide more complex surgeries at the main campus site and transition some of the volume for less complex surgical procedures to the extension site. Residents in the community will benefit from this expansion, having better surgical and procedural time access while decreasing wait times from diagnosis to procedure.

OPCHSM Recommendation

Contingent Approval is recommended.

Need Summary

The applicant projects 16,506 procedures in Year One and 18,307 in Year Three, with Medicaid utilization at 18.19%.

Program Summary

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

Financial Summary

The total project costs of \$60,041,496 will be funded with equity from NYU Langone Hospital.

Table with 3 columns: Budget, Year One (2026), Year Three (2028). Rows include Revenues, Expenses, Excess, and Revenues.

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 June 19, 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]

Approval conditional upon:

1. This project must be completed by **March 15, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **May 15, 2024**, and construction must be completed by **December 15, 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. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
5. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2012 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients, and other building occupants, essential resident/patient support services, and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of the same on-site for review by Department staff upon request. [AER]
6. This approval in no way obviates the applicant of the responsibility of complying with all applicable codes, rules, and regulations. Should violations be noted upon review of documents or found at the time of on-site inspections, or surveys, such violations shall be corrected prior to occupancy without additional costs allowed for reimbursement beyond the total project cost listed above. [AER]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area consists of portions of Nassau, Suffolk, and Queens County. 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%	19.20%
White (non-Hispanic)	58.3%	66.4%	24.6%	54.70%
Black or African American (non-Hispanic)	11.0%	6.9%	16.8%	13.90%
Asian (non-Hispanic)	10.5%	4.0%	25.6%	8.60%
Other (non-Hispanic)	3.1%	2.7%	4.8%	3.60%

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

According to Data USA, in 2020, 95.9% of Nassau County residents, 95.8% of Suffolk County residents, and 89.5% of Queens County residents had health coverage as follows:

County	Nassau	Suffolk	Queens
Health Coverage	95.9%	95.8%	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 number of projected procedures is 16,506 in Year One and 18,307 in Year Three with Medicaid utilization of 18.19% in the third year and no Charity Care. The table below shows the applicant's projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins FFS	833	5.05%	927	5.06%
Comm Ins MC	9,129	55.31%	10,122	55.29%
Medicare FFS	2,184	13.23%	2,420	13.22%
Medicare MC	1,116	6.76%	1,237	6.76%
Medicaid FFS	68	0.41%	76	0.42%
Medicaid MC	2,932	17.76%	3,254	17.77%
Private Pay	58	0.35%	65	0.35%
Other	186	1.13%	206	1.13%

The center will be a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

According to the applicant, there currently is an extended lead time for scheduling ambulatory surgery and the times available are either early morning or in the evening. The hospital is experiencing a substantial increase in the demand for surgical services at the Ambulatory Center Zeckendorf, the onsite ambulatory surgery unit, and the main operating room. Due to the limited availability for surgical time, both inpatient and outpatient room utilization averages more than 86% occupancy. This new facility will accommodate the increased ambulatory volume from the hospital setting. The transition of ambulatory volume from the hospital to the new site will provide capacity for more extensive and complex surgical procedures on the main campus.

Conclusion

Approval of this project allows the hospital to move ambulatory surgery cases from the hospital to a dedicated ambulatory surgery site. This will provide capacity for more extensive and complex surgical procedures on the hospital's main site. Approval of this project provides improved access to a variety of outpatient surgical procedures for the residents of Nassau, Queens, and Suffolk Counties.

Program Analysis

Project Proposal

NYU Langone-Long Island, an existing tertiary care 591-bed medical center at 259 First Street in Mineola (Nassau County), seeks approval to certify and construct a new extension clinic to be located at 1400 Northern Boulevard in Manhasset (Nassau County). The extension clinic will be certified for Orthopedic Surgery, Podiatric Surgery, General Surgery, Vascular Surgery, and Endoscopic Procedures. The extension clinic will provide eight (8) Operating Rooms (OR) and six (6) procedure rooms, and all associated support spaces.

The Applicant reports that they currently have an extended lead time for scheduling ambulatory surgery cases and the times available are either early in the morning or in the evening which the patients are dissatisfied with. The additional ambulatory surgical capacity will enable the accommodation of cases in a timelier manner and will free time in the main OR for more extensive and complex cases.

Staffing is expected to grow by 140.0 FTEs in Year One and 19.0 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.

Prevention Agenda

The NYU Langone Hospital- Long Island, in Nassau County, is seeking approval to establish a multi-specialty Ambulatory Surgery Center (ASC) at 1440 Northern Boulevard, Manhasset, New York. The new ASC will address the substantial increase in demand for surgical services at the Ambulatory Surgery Center Zeckendorf and the Main Operating Room.

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

- Preventing Chronic Diseases
- Promote a Healthy and Safe Environment

The proposed project, however, does not explicitly advance the local Prevention Agenda priorities that were identified in the most recently completed Community Service Plan (CSP), but it does improve access to care for patients who require ambulatory surgical procedures.

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

Total project costs are estimated at \$60,041,496 broken down as follows:

Renovation & Demolition	\$27,400,426
Design Contingency	2,740,042
Construction Contingency	1,370,021
Architect/Engineering Fees	5,333,631
Construction Manager Fees	3,205,014
Moveable Equipment	19,661,951
CON Fees	2,000
Additional Processing Fee	<u>328,411</u>
Total Project Cost	\$60,041,496

NYULH will provide equity to fund this project in its entirety. As shown in BFA Attachments A and B, NYULH has sufficient resources to meet the equity requirement.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>2026</u>		<u>2028</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial Fee-For-Service	\$ 3,659	\$ 3,047,885	\$ 3,657	\$3,389,814
Commercial Managed Care	\$ 7,525	68,700,175	\$ 7,512	76,036,428
Medicare Fee for Service	\$ 1,138	2,486,449	\$ 1,136	2,749,177
Medicare Managed Care	\$ 1,167	1,302,369	\$ 1,165	1,441,114
Medicaid Fee for Service	\$ 1,311	89,151	\$ 1,300	98,771
Medicaid Managed Care	\$ 1,699	4,981,431	\$ 1,696	5,517,824
Private Pay	\$ 1,161	67,350	\$ 1,149	74,666
Other	\$5,168	961,245	\$5,146	1,060,099
Total Revenues		<u>\$81,636,054</u>		<u>\$90,367,892</u>
Expenses:				
Operating	\$1,850.93	\$30,551,497	\$1,996.64	\$36,552,572
Capital	<u>686.96</u>	11,339,007	<u>913.83</u>	16,729,833
Total Expenses	\$2,537.89	<u>\$41,890,505</u>	\$2,910.47	<u>\$53,282,405</u>
Excess Revenues		<u>\$39,745,549</u>		<u>\$37,085,487</u>
Total Visits/Procedures		16,506		18,307
Cost Per Visit		\$2,537.90		\$2,910.49

The following is noted with respect to the operating budget:

- Revenues are based on current payor rates experienced at the Long Island Campus and published Medicaid and Medicare rates and negotiated commercial rates.
- Expenses are based on similar experiences at other NYU locations and projected increased volume during Year One and Year Three during start-up operations. During the start-up phase, more technicians and specialists are needed due to increased volume in Year Three, increasing FTEs from 140 FTEs to 159 FTEs adjusted for volume. Year Three is more normalized, and adjustments to staffing depending on volume for this start-up are a better prediction than Year One. Also, medical supply costs are expected to increase as part of the operating costs and would be a reasonable assumption in Year Three.
- Utilization assumptions are based on the current experience of the Long Island Campus.

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

	<u>Year One</u> <u>(2026)</u>	<u>Year Three</u> <u>(2028)</u>
Commercial Fee-For-Service	5.05%	5.06%
Commercial Managed Care	55.31%	55.29%
Medicare Fee for Service	13.23%	13.22%
Medicare Managed Care	6.76%	6.76%
Medicaid Fee for Service	0.41%	0.42%
Medicaid Managed Care	17.76%	17.77%
Private Pay	0.35%	0.35%
Other	<u>1.13%</u>	<u>1.13%</u>
Total	100.00%	100.00%

The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the source of payment. The hospital will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site which is summarized below:

Date:	November 29, 2022
Premise:	1440 Northern Manhasset Drive, Manhasset (3-Story building, 161,726 Sq. Ft.)
Landlord:	HBS Leasehold, LLC
Tenant:	New York University (NYU Grossman School of Medicine).
Term:	30 Years
Rental Amount:	\$6,226,451- yearly base rent and increases of 2.5% percent each year over the term.
Provisions:	Landlord shall maintain a Mid-Term allowance in (Year 20) for eligible alterations to the Premises during this eligible period. Tenant shall pay rent within five business days by wire to landlords' bank account.

Two (2) letters of rent reasonableness have been submitted from licensed NYS Realtors. Also, an executed affidavit has been submitted stating the lease is an arm's length agreement, landlord and tenant are not related. The landlord is Delaware LLC, located at 225 Liberty Street, 31st floor, New York, New York 10016.

Capability and Feasibility

The total project cost of \$60,041,496 will be met with equity from NYULH. The working capital requirements are estimated at \$8,880,400 based on two months of third-year expenses and will be funded through NYULH's operations. The submitted budget indicates a net income of \$39,745,549 and \$37,085,487 during the first and third years, respectively. The budget appears reasonable.

BFA Attachment A presents NYULH's 2021-2022 Certified Financial Statements showing the entity maintained positive working capital, a positive net equity position, and a net operating income of \$594,650,000 and \$619,176,000, for both years, respectively. BFA Attachment B presents NYULH's Internal Financial Statements, showing the entity maintained a positive working capital, positive net equity position, and a gain from operations of \$686,257,000 for the full fiscal year ending August 31, 2023.

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	August 31, 2023, Internal Financial Statement for NYU (12-Months)



Project # 231348-C
Long Island Community Hospital at NYU Langone Health

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: July 27, 2023

Executive Summary

Description

Long Island Community Hospital at NYU Langone Health (LICH), an existing Article 28, not-for-profit 306-bed medical center, requests approval to certify and construct a new Multi-Specialty Ambulatory Surgery Hospital Extension Clinic at 196 Main Street in Patchogue, New York. The extension clinic will be certified for orthopedic, podiatry, general, vascular, and endoscopy surgery services and consist of six (6) operating rooms and an Endoscopy Suite with four (4) procedure rooms and all associated support spaces. Dr. Hasan will serve as the Medical Director.

LICH is experiencing an increase in demand for surgical services at the main site, which limits the recruitment of new surgeons and the growth in ambulatory procedures. This project is expected to alleviate those pressures. The new facility will accommodate the increased ambulatory surgery volume from the hospital setting at a dedicated ambulatory site of service, resulting in an increase in patient satisfaction and an expected surgical growth rate of 5% annually. The transition of ambulatory volume from the main hospital to the new extension clinic will free up capacity for more extensive and complex surgical procedures on the main campus.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 11,424 visits in the first year and 12,680 in the third. Medicaid utilization is projected at 9.97% with no Charity Care.

Program Summary

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

Financial Summary

The total project cost of \$69,570,797 will be met with equity from hospital operations.

Table with 3 columns: Budget, Year One (2025), Year Three (2027). Rows include Revenues, Expenses, and Excess Revenues.

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 20, 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. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an MAI appraisal that is acceptable to the Department of Health. [BFA]
4. 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]

Approval conditional upon:

1. This project must be completed by **December 8, 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 **August 8, 2024**, and construction must be completed by **September 8, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/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]
5. 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

February 8, 2024

Need Analysis

Background and Analysis

The primary service area is Suffolk County. The population of Suffolk County is projected to decrease to 1,492,157 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 State.

Demographics	Suffolk County	New York State
Total Population-2021 Estimate	1,522,998	20,114,745
Hispanic or Latino (of any race)	19.9%	19.2%
White (non-Hispanic)	66.4%	54.7%
Black or African American (non-Hispanic)	6.9%	13.9%
Asian(non-Hispanic)	4.0%	8.6%
Other (non-Hispanic)	2.7%	3.6%

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

In 2020, 95.8% of Suffolk County residents had health coverage as follows:

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13%
Non-Group Plans	12.4%
Military or VA	0.501%

Source: Data USA

According to the applicant, this project is needed to accommodate the increased demand for surgical services at the main site. The transition of ambulatory volume from the hospital to the new site will provide capacity for more extensive and complex surgical procedures on the main campus.

The number of projected procedures is 11,424 in Year One and 12,680 in Year Three with Medicaid at 9.97%. The table below shows the applicant's projected payor source utilization for Years One and Year Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins FFS	95	0.83%	111	0.88%
Comm Ins MC	2,770	24.25%	3,084	24.32%
Medicare FFS	2,986	26.14%	3,281	25.88%
Medicare MC	2,904	25.42%	3,220	25.39%
Medicaid FFS	555	4.86%	622	4.91%
Medicaid MC	581	5.09%	642	5.06%
Private Pay	206	1.80%	234	1.85%
Other	1,327	11.62%	1,486	11.72%

The center will be a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

Conclusion

Approval of this project allows the hospital to move ambulatory surgery cases from the hospital to a dedicated ambulatory surgery site. This will provide capacity for more extensive and complex surgical procedures on the hospital's main site. Approval of this project provides improved access to a variety of outpatient surgical procedures for the residents of Suffolk County. From a Need perspective, Approval is recommended.

Program Analysis

Project Proposal

Proposed Operator	Long Island Community Hospital
To Be Known As	Long Island Community Hospital at NYU Langone Health
Site Address	196 Main Street Patchogue, NY 11772
Surgical Specialties	Ambulatory Surgery-Multi-Specialty
Surgery Categories	Endoscopic procedures including colonoscopies and EGD procedures, orthopedic surgery, podiatric surgery, general and vascular surgery
Operating Rooms	6
Procedure Rooms	4
Hours of Operation	Monday through Saturday 9 am – 5 pm
Staffing (1st Year / 3rd Year)	119 FTEs / 121 FTEs
Medical Director(s)	Chair of surgery – Dr. Collin Brathwaite Chair of Medicine – Dr. Parag Mehta Medical Director – Dr. Hasan
Emergency, In-Patient, and Backup Support Services Agreement and Distance	LICH will provide emergency, inpatient, and backup support services agreement, and distance. LICH in Patchogue to provide backup services. 4.8 miles/ 14 minutes
After-hours access	Patients will have access to surgical staff during hours the facility is closed by utilizing the on-call operating room team.

Character and Competence

The facility will be governed by the Board of Directors of Long Island Community Hospital with more than 25 members from the community.

Integration with Community Resources

The Hospital established an Advisory Council to receive further input to the needs of the community's residents. There are more than 30 members on the Advisory Council. Members are typically active in other areas of the community and include civic leaders, members of the clergy, school representatives, public health advocates, business leaders, and service and fraternal club members.

Long Island Community Hospital's outreach program participates in community health fairs, with senior and community centers, as well as civic associations throughout the region. Long Island Community Hospital is also an active member of eight Chambers of Commerce in the community. Membership with these chambers affords LI Community Hospital the opportunity to learn of the needs of the workforce and business leaders in the community. Long Island Community Hospital has a strong presence in the civic and service clubs, (e.g., Kiwanis, Rotary Club, Lions,) houses of worship, the YMCA and Boys and Girls Club, local government health and social service programs, the social service agencies, senior living communities, and public libraries. The engagement of the New York State Department of Health Schedule 16B Certificate of Need Application DOH 155-D Schedule 16B 5 (11/2019) broader community, for assessment processes, is achieved through the LICH's and its partners' ongoing distribution of the Long Island and Eastern Queens Community Health Needs Assessment.

The Long Island Community Hospital specifically addresses the selected priorities through education and interventions. For the condition of diabetes, we offer the New York State National Diabetes Prevention Program (NYS NDPP) to help individuals screened as borderline to prevent full-blown diabetes, and for those already diagnosed, we offer the American Diabetes Association Program at Long Island Community Hospital. These are the statistics: Diabetes mortality rates are 14% of all deaths in Suffolk County and are the highest in the region. Diabetes hospitalization rates in Suffolk County are also highest in the region at 15.9%. Suffolk County has 29.1% of its population classified as obese. This exceeds both the State at 24.9% and the country at 23.2%. The rate of hospitalization for short-term complications due

to diabetes per 10,000 increased to 4.83. 3% of Suffolk County residents are at risk for premature death due to diabetes.

Substance Use Disorders - The prevalence of heroin use is increasing, due to its low cost and ease of accessibility. In 2016 Our Emergency Room has noted a significant increase in drug-related visits. In Suffolk County, drug-related admissions increased by 9% from 2013 to 2014. As such, Long Island Community Hospital has identified a strong need for community education, prevention, and treatment services to quell this rising epidemic.

It is not the intent of the Applicant to become part of an Accountable Care Organization.

The facility will utilize an electronic medical record system (EPIC).

Prevention Agenda

Long Island Community Hospital at NYU Langone Health in Suffolk County is seeking approval to establish an Ambulatory Surgery Hospital Extension Clinic (ASC) at 196 Main Street in Patchogue, New York. The new facility will address the substantial increase in demand for surgical services at the main site, which limits the growth in the recruitment of new surgeons and the growth in ambulatory procedures.

Long Island Community Hospital at NYU Langone Health is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders

Establishing the ASC would improve access for current patients; however, it does not explicitly advance the local Prevention Agenda priorities identified in the most recently completed Community Health Improvement/Community Service Plan.

In 2021, Long Island Community Hospital at NYU Langone Health spent \$236,070 on community health improvement services, representing 0.09% of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for building acquisition, renovations, and the acquisition of moveable equipment, is estimated at \$69,570,797, broken down as follows:

Building Acquisition	\$7,200,000
Renovation and Demolition	32,001,988
Asbestos Abatement or Removal	1,200,000
Design Contingency	3,200,198
Construction Contingency	3,200,198
Fixed Equipment	2,415,425
Planning Consultant Fees	405,000
Architect/Engineering Fees	2,034,219
Construction Manager Fees	836,220
Other Fees (Consultant)	300,562
Moveable Equipment	13,054,869
Telecommunications	3,339,583
CON Fee	2,000
Additional Processing Fee	<u>380,535</u>
Total Project Cost	<u>\$69,570,797</u>

The applicant will provide equity to meet the total project cost.

Operating Budget

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

	<u>Year One</u> <u>(2025)</u>		<u>Year Three</u> <u>(2027)</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$4,669	\$443,508	\$4,725	\$524,421
Commercial MC	\$7,656	\$21,206,664	\$7,610	\$23,467,926
Medicare FFS	\$965	\$2,881,629	\$955	\$3,132,511
Medicare MC	\$1,082	\$3,140,745	\$1,081	\$3,479,822
Medicaid FFS	\$1,651	\$916,323	\$1,659	\$1,032,029
Medicaid MC	\$1,713	\$995,490	\$1,711	\$1,098,599
Private Pay	\$1,908	\$393,123	\$1,941	\$454,078
Other	\$2,155	<u>\$2,860,321</u>	\$2,125	<u>\$3,158,259</u>
Total Revenues		\$32,837,803		\$36,347,645
Expenses:				
Operating	\$1,983	\$22,650,952	\$1,700	\$21,556,655
Capital	<u>\$375</u>	<u>\$4,279,136</u>	<u>\$675</u>	<u>\$8,558,272</u>
Total Expenses	\$2,357	\$26,930,088	\$2,375	\$30,114,927
Excess Revenues		\$5,907,715		\$6,232,718
Utilization: (Procedures)		11,424		12,680

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

- Expense assumptions are based on the historical experience of the hospital.
- Utilization assumptions are based on four (4) ambulatory surgery units and four (4) endoscopy rooms operating 250 days per year for 9.5 hours per day with an 85% occupancy rate and a 5% year-over-year growth.

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

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Commercial FFS	0.83%	0.88%
Commercial MC	24.25%	24.32%
Medicare FFS	26.14%	25.88%
Medicare MC	25.42%	25.39%
Medicaid FFS	4.86%	4.91%
Medicaid MC	5.09%	5.06%
Private Pay	1.80%	1.85%
Other	<u>11.62%</u>	<u>11.72%</u>
Total	100.00%	100.00%

Building Purchase Agreement

The applicant has submitted an executed purchase and sale agreement for the building, which is summarized below:

Date	January 18, 2022
Seller	East Main Street Associates, LLC
Purchaser	New York University
Purchase Price	\$7,200,000
Payment of Purchase Price	\$360,000 provided in escrow and \$6,840,000 payable at Closing.

Capability and Feasibility

The total project cost is \$69,570,797 and will be met with equity from the operations of NYU Langone Hospitals.

Working capital requirements are estimated at \$5,019,154, which is equivalent to two months of third-year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. 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 resources to fund the total project cost and the working capital contribution.

The submitted budget projects excess revenues over expenses of \$5,907,715 and \$6,232,718 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable. As shown in Attachment A, NYU Langone Hospitals had positive working capital and net asset positions on August 31, 2021, and August 31, 2022. Also, NYU Langone Hospitals achieved an excess of revenues over expenses of \$748,583,000 and \$360,846,000 on August 31, 2021, and August 31, 2022, respectively.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Financial Summary- August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals



Project # 231299-C
Weill Cornell Imaging at New York Presbyterian

Program: Diagnostic and Treatment Center
Purpose: Construction
County: New York
Acknowledged: July 13, 2023

Executive Summary

Description

Weill Cornell Imaging at New York-Presbyterian (WCINYP, the "Center"), an existing Article 28 Diagnostic & Treatment Center (D&TC) specializing in radiology and imaging services, requests approval to certify and construct a new radiology extension clinic at 575 Lexington Avenue, New York (New York County). The extension clinic will provide imaging services, including four (4) MRI machines, three (3) CT Scanners, thirteen (13) ultrasound machines, nine (9) mammography units, (1) One EOS-X-ray unit, and one (1) densitometry unit.

WCINYP's main site is 520 East 70th Street, New York (New York County). WCINYP is consolidating the services available at the two (2) existing extension clinics into a single site. Upon PHHPC approval of this proposed new extension clinic, WCINYP will relocate two (2) existing extension clinics at 416 East 55th Street (PFI 8535) and 425 East 61st Street (PFI 8570). These extension clinics are approximately 0.5 miles from each other and less than one (1) mile from the proposed new extension clinic on Lexington Avenue. The new facility will be accessible to the patients who currently receive services at the to-be-closed extension clinics and will also provide increased capacity for other patients. Draft relocation Plans for the (2) existing clinics have been submitted and will be formalized upon PHHPC's approval of this project.

Keith Hentel, M.D., will serve as the Medical Director and is a Board-certified Radiologist who will supervise the operations of the extension clinic. The New York-Presbyterian Hospital will serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 91,644 visits in Year One and 114,780 in Year Three. The projected payor mix includes 7.9% Medicaid and no Charity Care for both years.

Program Summary

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

Financial Summary

The total project cost of \$94,956,814 will be funded with \$92,658,430 in equity from WCINYP and \$2,298,384 from an equipment lease for the cost of the two (2) ultrasound machines.

Table with 3 columns: Budget, Year One 2026, Year Three 2028. Rows include Revenues, Expenses, Net Income/Loss.

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 13, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed building lease agreement acceptable to the Department of Health. [BFA]
5. Submission of all executed equipment leases acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **January 15, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2024**, and construction must be completed by **October 15, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area for this project is New York County, with a focus on zip code 10022. The population of New York County in 2021 was 1,669,127, according to the most recent American Community Survey population estimates data. The population of the county is estimated to increase to 1,720,649 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 3.1%. The demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Zip Code 10022	New York County	New York State
Total Population - 2021 Estimate	33,303	1,669,127	20,114,745
Hispanic or Latino (of any race)	9.4%	25.6%	19.2%
White (non-Hispanic)	76.9%	46.7%	54.7%
Black or African American (non-Hispanic)	1.2%	12.1%	13.9%
Asian (non-Hispanic)	10.3%	11.8%	8.6%
Other (non-Hispanic)	2.2%	3.8%	3.6%

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

According to Data USA, in 2018, 94.2% of the population of New York County had health coverage as follows:

Employee plans	51.5%
Medicaid	20.5%
Medicare	9.7%
Non-group plans	12.2%
Military or VA plans	0.315%

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	61.1%	61.1%
Medicare	30.2%	30.2%
Medicaid	7.9%	7.9%
Private Pay	0.8%	0.8%
Charity Care	0%	0%
Other	0.04%	0.04%

The applicant has a policy to provide free or reduced-price services that are medically necessary to persons who are determined to be unable to pay for their care in whole or in part regardless of age, gender, race, national origin, socio-economic or immigrant status, sexual orientation, or religious affiliation.

The applicant anticipates a significant portion of the proposed new extension clinic's patients will be persons who commute to work in midtown Manhattan, taking advantage of the radiology services provided during the business day.

The applicant is working to partner in a Transfer and Affiliation Agreement with New York-Presbyterian Hospital (NYP) for backup hospital services located 1.6 miles and 15 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can

prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

Hospital Admissions per 100,000 Adults			
PQI Name	Zip Code 10022	New York County	New York State
Chronic Obstructive Pulmonary Disease or Asthma	111	191	244
Hypertension	7	55	63
Heart Failure	151	244	336
Bacterial Pneumonia	89	57	105
Uncontrolled Diabetes	34	35	45
Prevention Quality Overall Composite	487	729	994

Conclusion

Approval of this project will allow for expanded access to imaging services for those who commute and reside in New York County.

Program Analysis

Project Proposal

Weill Cornell Imaging at New York Presbyterian (WCINYP), an existing Article 28 Diagnostic and Treatment Center at 520 East 70th Street, Level J-0, in New York (New York County), seeks approval to certify and construct a new extension clinic to be located at 575 Lexington Avenue in New York (New York County). The extension clinic will be certified for CT Scanner, Magnetic Resonance Imaging, and Medical Services - Other Medical Specialties. The extension clinic will provide CT Scanning, MRI imaging, Ultrasound, Mammography, and X-ray, including DEXA bone scanning and EOS X-ray.

The Applicant reports that the creation of the new extension clinic will be the consolidation of two existing clinics that are within one mile of each other and the new clinic. The clinics would all be performing essentially the same services. The new flagship facility will continue to be accessible to the patients who previously received services at the other facilities and will have increased capacity in order to better meet the needs for service.

The Applicant reports that WCINYP experiences very high utilization across existing sites. Total volume across all existing sites increased from 199,943 in 2017 to 269,297 in 2022. The facilities did see a decrease in 2020 from the COVID-19 pandemic but rebounded with a 13.4% increase in patient visits from 2021 to 2022. One of the most important factors is that elderly patients are heavy users of radiologic imaging procedures. The elderly population is expected to increase by 11.4%. This has strained the capacity at the Manhattan sites as these patients currently travel from Brooklyn to the Manhattan sites to receive their imaging, which has created a demand for longer hours and weekend hours. There has been an 8% increase in physicians practicing in Manhattan who referred patients to WCINYP, which increases constraints and creates longer wait times. The proposed project will help alleviate these.

Staffing is expected to grow by 155.25 FTEs in Year One and 37.00 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.

The Department issued a Stipulation and Order dated October 3, 2023, and fined New York Presbyterian Queens \$10,000 based on findings from a survey that was completed on April 6, 2023. Deficient practice was cited in the area of Sexual Assault and Patient Rights. Specifically, the facility failed to investigate an allegation of sexual assault and implement corrective actions.

The Department issued a Stipulation and Order dated November 6, 2017, and fined New York Presbyterian Queens \$2,000 based on findings from an allegation survey that was completed on May 16, 2016. Deficient practice was cited in the area of Patient Rights.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project costs for renovation and movable equipment are estimated at \$94,956,814 and detailed as follows.

Renovation & Demolition	\$42,088,624
Temporary Utilities	600,000
Design Contingency	2,303,000
Construction Contingency	5,093,300
Planning/Consulting Fees	5,936,339
Architect/Engineering Fees	4,352,963
Construction Manager Fees	1,501,376
Other Fees	1,844,233
Movable Equipment	28,252,794
Telecommunications	2,462,800
Application Fee	2,000
Additional Processing Fee	<u>519,395</u>
Total Project Cost	\$94,956,814

The applicant's financing plan appears as follows:

Equity	\$92,658,430
Equipment Leases: (interest/term TBD) *	<u>2,298,384</u>
Total Project Costs:	\$94,956,814

* The operator has two (2) quotes from GE Healthcare and Siemen's Medical Solutions USA, Inc. Both are drafts.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for Years One and Three, summarized below:

	Year One 2025		Year Three 2027	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Outpatient Rev.				
Commercial FFS	\$927.83	\$3,729,890	\$971.14	\$4,889,686
Commercial MC	\$926.16	48,107,655	\$969.40	63,066,561
Medicare FFS	\$244.42	5,137,392	\$255.82	6,734,846
Medicare MC	\$417.66	2,794,556	\$437.17	3,663,514
Medicaid FFS	\$32.63	15,465	\$34.19	20,274
Medicaid MC	\$295.09	1,989,227	\$308.87	2,607,770
Private Pay	\$529.86	379,382	\$555.08	497,349
Other *	\$903.03	36,121	\$947.06	47,353
Total Revenues		<u>\$62,189,688</u>		<u>\$81,527,353</u>
Expenses				
Operating	\$436.47	\$40,000,030	\$441.41	\$53,190,316
Capital	\$109.45	10,030,227	\$87.39	10,030,227
Total Expense	\$545.92	<u>\$50,030,257</u>	\$550.80	<u>\$63,220,543</u>
Net Income		<u>\$12,159,431</u>		<u>\$18,636,810</u>
Visits		91,644		114,780
Cost per Visit		\$545.92		\$550.80

* Other is related to the sliding scale and discount policy currently in place.

The following is noted with respect to the submitted budget:

- Revenues and projections are based on the actual operations of the existing sites in keeping with the current utilization and volume trends experienced at WCINYP's existing sites.
- The payer mix and revenue by payer are also based on the actual experience of the existing two (2) sites being consolidated.
- The staffing plans and projected operating expenses are based on the actual experience of the two (2) Centers providing the proposed imaging service at its proposed new site.
- WCINYP states it does have a free or reduced-price policy for people who are unable to pay based on their financial situation, which also includes outpatient services.

Utilization by payor source for Year One and Year Three is based on the consolidating of the (2) two stated facilities into (1) facility projected as follows:

Payor	<u>Years One</u>	<u>Year Three</u>
	<u>2026</u>	<u>2028</u>
<u>Outpatient:</u>		
Commercial FFS	4.39%	4.39%
Commercial MC	56.68%	56.68%
Medicare FFS	22.94%	22.94%
Medicare MC	7.30%	7.30%
Medicaid FFS	.52%	.52%
Medicaid MC	7.36%	7.36%
Private Pay	.78%	.78%
Other	.04%	.04%
Total	100%	100%

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

Date:	TBD
Premises:	757 Lexington Avenue, New York (51,527 sq. ft.)
Landlord:	575 Lex Property Owner, L.L.C.
Tenant:	Cornell University
Assignor:	Cornell University (for the Joan and Sanford I. Weill Medical College)
Assignee:	Weill Cornell Imaging at New York-Presbyterian
Term:	5-year term or option to lock in a 10-year term.
Rent:	\$5,282,386 fixed annually and initially has a (5) year or (10) year term to choose from.
Provisions:	Lease space includes a portion of the basement and ground floor and the entire 2nd through 6th floor. The lease is currently under the 6th amendment dependent upon the Assignee exercising the 5 or 10 term it may raise the costs.

The applicant states that there is no relationship between WCINYP and the landlord. There is a relationship between Cornell University and WCINYP - Cornell University is a 50% member of MRSI Management, Inc., a 50% owner and active member of WCINYP. The applicant has submitted two (2) letters of rent reasonableness from NYS-licensed independent realtors.

Capability and Feasibility

The total project cost is \$94,956,814 and will be funded with \$92,658,430 in equity from WCINYP and a \$2,298,384 equipment lease for the cost of the (2) ultrasound machines. Draft equipment leases have been submitted from Siemens Medical Solutions USA, Inc. and General Electric Healthcare; however, the interest rates and terms still need to be established. The working capital requirements are estimated at \$10,536,757, based on two months of third-year expenses, and will be funded with equity from WCINYP operations. The submitted budget projects a net income of \$12,159,431 and \$18,636,810 during years one and three of operations. The budget appears reasonable.

BFA Attachment A presents the 2021-2022 Certified Financial Statements showing the entity maintained an average positive working capital and net asset position for both years and an operating income of \$56,046,000 and \$69,750,000 in 2021 and 2022, respectively.

BFA Attachment B presents the June 30, 2023, Internal Financial Statements. The entity maintained a positive working capital, a positive net asset position, and a net operating income of \$39,069,818.

Conclusion

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

<h2>Attachments</h2>

BHFP Attachment	Map
BFA Attachment A	2021-2022 Audited Financial Statements
BFA Attachment B	(6/30/2023) Internal Financial Statements



Project # 232063-C
ODA Primary Health Care Network, Inc

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Construction **Acknowledged:** September 27, 2023

Executive Summary

Description

ODA Primary Health Care Network, Inc. (ODA), an existing Article 28, voluntary not-for-profit corporation, and Federally Qualified Health Center (FQHC) requests approval to certify a new extension clinic for primary medical care and medical specialties (pediatrics, internal medicine, family medicine, endocrinology, cardiology, and podiatry), ophthalmology and optometry services. The new extension clinic will be in leased space on the second floor at 251 Wallabout Street, Brooklyn, NY (Kings County).

Currently, the services are provided at an existing extension clinic, less than a mile away (.6) at 18 Heyward Street, Brooklyn, NY (Kings County). The clinic, known as the ODA Therapy Center, provides only ophthalmology and optometry. This project will provide patients with access to a broader continuum of services at a single location. Upon completion of this project, the ODA Therapy Center extension clinic will be closed.

Dr. Robert B. Krausz, who is Board-Certified in pediatrics, will serve as Medical Director. ODA has an existing Transfer and Affiliation Agreement with Interfaith Medical Center, located 2.6 miles (21-minute travel time) for back-up and emergency care services.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 60,496 visits in Year One and 65,995 in Year Three. The projected payor mix includes 74% Medicaid and 5% Charity Care in Year One and Year Three.

Program Summary

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

Financial Summary

Total project costs of \$18,298,281 will be met with \$6,048,281 in equity from ODA Primary Health Care Network, Inc. and \$12,250,000 from a Statewide Health Care Facility Transformation Grant Program III grant.

	<u>Year One</u>	<u>Year Three</u>
	<u>2025</u>	<u>2027</u>
Budget:		
Revenues	\$11,715,157	\$13,005,140
Expenses	<u>\$12,082,206</u>	<u>\$12,921,978</u>
Net Income/ (Loss)	(\$367,049)	\$83,162

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Statewide Healthcare Facility Transformation Program 3 grant (SHCFTP III Grant), acceptable to the Department of Health. [BFA].
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **September 30, 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 **June 30, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
5. 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

February 8, 2024

Need Analysis

Background and Analysis

The primary service area for this project is the Northwest corner of Brooklyn. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Dental Health, and Mental Health and is also a Medically Underserved Area/Population (MUA/P). The population of Kings County is estimated to increase to 2,844,643 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 4.9%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Primary Service Area	Kings County	New York State
Total Population – 2021 Estimate	249,930	2,712,360	20,114,745
Hispanic or Latino (of any race)	24.6%	18.8%	19.2%
White (non-Hispanic)	53.1%	36.7%	54.7%
Black or African American (non-Hispanic)	12.6%	28.6%	13.9%
Asian (non-Hispanic)	5.9%	11.7%	8.6%
Other (non-Hispanic)	3.8%	4.1%	3.6%

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

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-group plans	11.8%
Military or VA plans	0.327%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	14%	14%
Medicare	7%	7%
Medicaid	74%	74%
Private Pay	0%	0%
Charity Care	5%	5%
Other	0%	0%

The hours of operation for the extension clinic will be Sunday through Thursday from 8 AM to 8 PM, and Friday from 8 AM to 2 PM. Walk-in patients will be seen on a first-come, first-served basis. ODA also has an After-Hours On-Call Service that is available to patients 24 hours a day, 365 days a year.

Patients in need of the clinic's services will be accepted without regard to age, sex, sexual orientation, race, creed, religion, disability, source of payment, or other personal characteristics. ODA has developed a sliding fee scale for patients who are uninsured.

The applicant has an existing Affiliation and Transfer Agreement with One Brooklyn Health System (OBHS) for backup hospital services. The closest OBHS hospital to the proposed extension clinic, Interfaith Medical Center, is 2.6 miles and 21 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

Hospital Admissions per 100,000 Adults				
PQI Name	Zip Code 11206	Primary Service Area*	Kings County	New York State
Chronic Obstructive Pulmonary Disease or Asthma	411	292	312	244
Hypertension	712	69	76	63
Heart Failure	423	330	359	336
Bacterial Pneumonia	65	59	82	105
Uncontrolled Diabetes	59	42	59	45
Prevention Quality Overall Composite	1201	949	1015	994

**The area encompassed by ZIP Code 11249 was previously part of 11211*

Conclusion

Approval of this project will allow for expanded access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Optometry O/P for the residents of Kings County.

Program Analysis

Project Proposal

ODA Primary Health Care Network, Inc. (ODA, the “Center”), an existing, not-for-profit Article 28 diagnostic and treatment center and a Federally Qualified Health Center (FQHC), is seeking to certify a new extension clinic at 251 Wallabout Street, Brooklyn (Kings County), New York 11206. The extension clinic will provide primary medical care and medical specialties (pediatrics, internal medicine, family medicine, endocrinology, cardiology, and podiatry), ophthalmology, and optometry services.

Proposed Operator	ODA Primary Health Care Network, Inc.
To Be Known As	ODA Primary Health Care Network, Inc.
Site Address	<p>New Site: 251 Wallabout Street Brooklyn, NY 11206 Kings County</p> <p>Old Site: 18 Heyward St. Brooklyn, NY 11249</p>
Specialties	<p>New Site: Medical Services-Primary Care Medical Services-Medical Specialties Optometry Ophthalmology</p>
Hours of Operation	<p>Primary Site: Sunday to Thursday 8:00 am to 8:00 pm Fridays 8:00 am to 2:00 pm</p>
Staffing (1st Year / 3rd Year)	64 FTEs / 65.92 FTEs
Medical Director(s)	Dr. Robert Krausz, M.D
Emergency, In-Patient, and Backup Support Services Agreement and Distance	<p>Agreement in place with: One Brooklyn Health System 2.6 miles/21 minutes</p>

The facility will utilize an EMR system (eClinicalworks). ODA has an existing Affiliation and Transfer Agreement with One Brooklyn Health System for backup hospital services.

Dr. Robert Krausz, M.D. is the proposed Medical Director. Dr. Krausz graduated from Albert Einstein College of Medicine in 1982 and had a residency at Bronx Municipal Hospital Center until 1985. He is registered through March 2024. He has been the Chief Medical Officer at ODA Primary Health Care Center, Inc. since 2008.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project costs for construction and movable equipment are estimated at \$18,298,281 and detailed as follows.

Renovation	\$13,245,050
Design Contingency	\$1,324,505
Construction Contingency	\$1,324,505
Architect/Engineering Fees	\$1,059,604
Movable Equipment	\$1,261,399
Application Fee	\$1,250
Additional Processing Fee	<u>\$81,968</u>
Total Project Cost	\$18,298,281

ODA Primary Health Care Network, Inc. will provide \$6,048,281 in equity to fund the project. The remaining \$12,250,000 will be funded with a SHCFTP III grant. BFA Attachment A, ODA Primary Health Care Network, Inc. Certified Financial Statements, show sufficient resources to meet the cash equity requirement for the project.

Operating Budget

The applicant has submitted an operating budget, in 2024 dollars, for Years One (2025) and Three (2027), summarized below:

	Year One (2025)		Year Three (2027)	
	Per Visit	Total	Per Visit	Total
Outpatient Rev.				
Commercial MC	\$85.00	\$719,950	\$85.00	\$785,400
Medicare MC	\$148.96	\$630,846	\$148.96	\$687,450
Medicaid FFS	\$229.82	\$278,077	\$234.43	\$309,454
Medicaid MC	\$229.82	\$10,010,759	\$234.43	\$11,140,336
Other Operating Revenue		<u>\$75,525</u>		<u>\$82,500</u>
Total Revenues		\$11,715,157		\$13,005,140
Expenses				
Operating	\$144.78	\$8,758,500	\$143.54	\$9,473,142
Capital	\$55.68	<u>\$3,323,706</u>	<u>\$52.26</u>	<u>\$3,448,836</u>
Total Expense	\$200.46	\$12,082,206	\$195.80	\$12,921,978
Net Income/(Loss)		<u>(\$367,049)</u>		<u>\$83,162</u>
Visits		60,496		65,995
Cost per Visit		\$200.46		\$195.80

The following is noted with respect to the submitted budget:

- Expense, utilization, and revenue assumptions are based on the actual operations of ODA in providing the proposed services at its existing sites.

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

<u>Outpatient:</u>	Year One <u>(2025)</u>	Year Three <u>(2027)</u>
Commercial MC	14%	14%
Medicare MC	7%	7%
Medicaid FFS	2%	2%
Medicaid MC	72%	72%
Charity Care	<u>5%</u>	<u>5%</u>
Total	100%	100%

The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the source of payment. The hospital will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

Lease Agreement

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

Premises:	40,606 Square Feet on the second floor of the building and 2,463 Square Feet on the ground floor located at 251 Wallabout Street, Brooklyn, NY
Landlord:	Harrison Realty II, LLC
Tenant:	ODA Primary Health Care Network, Inc
Terms:	15 years with 3 (5) year extensions
Rental:	\$1,983,408 annually for Year one with an annual 2% increase for Year two going forward
Provisions:	Triple Net lease

The lease arrangement is an arm's length agreement. The applicant submitted an affidavit attesting to no relationship between the landlord and the operating entity. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

The total project costs of \$18,298,281 for this application will be met with equity of \$6,048,281 from ODA Primary Health Care Network, Inc.'s accumulated funds, and the remaining \$12,250,000 will be funded from a SHCFTP III grant.

The working capital requirements are estimated at \$2,153,663, based on two months of third-year expenses, and will be funded with equity from ODA Primary Health Care Network, Inc. As shown in BFA Attachment A, ODA has sufficient resources to meet the working capital and cash equity requirement for the project.

The submitted budget projects a net loss of (\$367,049) and a net gain of \$83,162 during Year One and Year Three of operations, respectively. The budget appears reasonable. The year-one loss will be covered by the operations of ODA Primary Health Care Network, Inc. A letter of support has been provided by the CEO to cover the loss.

BFA Attachment A presents the 2022 Certified Financial Statements of ODA Primary Health Care Network, Inc. showing the entity maintained positive working capital, a positive net equity position, and a net operating income of \$26,064,239. BFA Attachment B presents the 1/1/23-8/31/23 internal financial statement of ODA Primary Health Care Network, Inc. which shows the entity maintained positive working capital and positive net equity positions and a gain from operations of \$2,666,632 during the eight-month period.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2022 Audited Financial Statements and the 1/1/2023-8/31/2023 Internal Financial Statements of ODA Primary Health Care Network, Inc.



**Project # 231308-C
New York-Presbyterian Westchester**

**Program: Hospital
Purpose: Construction**

**County: Westchester
Acknowledged: July 13, 2023**

Executive Summary

Description

New York-Presbyterian Hospital Westchester (NYPHW), a voluntary not-for-profit, Article 28, 288-bed hospital requests approval to certify and construct a Multi-Specialty Ambulatory Surgery Hospital Extension Clinic on the 3rd and 4th floor at 1111 Westchester Avenue, White Plains (Westchester County). The proposed clinic will be certified for Ambulatory Surgery-Multispecialty, including orthopedics, general surgery, ophthalmology, obstetrics/gynecology (OB/GYN), urology, and ear, nose, and throat (ENT). The clinic will also be certified in Medical Services-Other Medical Specialties, including therapy-speech language o/p, therapy-occupational o/p, and therapy-physical o/p.

The new extension clinic will have ten operating rooms, thirty pre-operative prep/recovery positions, twenty infusion treatment areas, space for the rehabilitation therapy program, and requisite support areas.

William J. Higgins, M.D., MBA, Board-certified in Internal Medicine, will serve as Medical Director.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 55,219 visits (8,423 surgical) in Year One and 67,486 (11,403 surgical) in Year Three, with Medicaid at 15.84% in Year Three.

Program Summary

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

Financial Summary

Total project costs of \$169,322,634 will be funded with equity from The New York and Presbyterian Hospital (NYPH), the operator of New York-Presbyterian Hospital Westchester.

Budget:	<u>Year One</u> 2025	<u>Year Three</u> 2027
Revenues	\$93,704,618	\$135,075,480
Expenses:	<u>107,817,863</u>	<u>118,009,855</u>
Gain/(Loss)	(\$14,113,245)	\$17,065,625

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 14, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **January 15, 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 15, 2024**, and construction must be completed by **November 15, 2024**, 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

February 8, 2024

Need Analysis

Background and Analysis

The primary service area consists of Westchester and Rockland Counties. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Westchester County	Rockland County	New York State
Total Population-2021 Estimate	999,723	336,485	20,114,745
Hispanic or Latino (of any race)	25.2%	18.1%	19.2%
White (non-Hispanic)	52.4%	62.9%	54.7%
Black or African American (non-Hispanic)	13.3%	10.8%	13.9%
Asian (non-Hispanic)	5.9%	5.9%	8.6%
Other (non-Hispanic)	3.2%	2.4%	3.6%

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

According to Data USA, in 2021, 94.9% of the population of Westchester County, and 95.7% of the population of Rockland County had health coverage as follows:

	Westchester	Rockland
Total	94.9%	95.7%
Employer Plans	56.2%	45.0%
Medicaid	14.2%	27.7%
Medicare	12.7%	11.7%
Non-Group Plans	11.5%	11.1%
Military or VA	0.3%	0.3%

Projected visits are 55,219 in Year One and 67,486 in Year Three with Medicaid at 15.84% in Year Three. The table below shows Years One and Three's projected payor source utilization.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	8,817	15.97%	10,692	15.84%
Medicare	20,895	37.84%	25,347	37.56%
Commercial	23,577	42.70%	29,242	43.33%
Other	1,930	3.50%	2,205	3.27%

The table below shows the number of visits per medical specialty for years one and three.

Specialty	1st Year	3rd Year
Surgery	8,423	11,403
Rehab	39,008	44,557
Infusion	7,788	11,526
Totals	55,219	67,486

The proposed center will be certified for the following services: multi-specialty ambulatory surgery, medical services- other medical specialties, therapy-speech language o/p, therapy-occupational o/p, and therapy-physical o/p. Currently, patients from the proposed service area receive care in dispersed locations throughout Westchester and New York counties, which can create a fragmented care model and require longer travel time. This project seeks to improve inefficiencies and address these concerns by providing a convenient and accessible modernized ambulatory facility. Market data supports a shift in site of care demonstrating that outpatient surgical volumes will continue to grow by 18% through 2033. The new facility will transform the way the hospital delivers care to its ambulatory patients and provide the necessary space in the hospital to increase access to surgical services in those communities.

The center will be a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

Conclusion

Approval of this project will allow the hospital to transform the way it delivers care for a variety of medical services and provide the necessary space in the existing hospital to increase access to surgical services for the residents of Westchester and Rockland Counties.

Program Analysis

Project Proposal

New York Presbyterian Westchester, an existing 288-bed community hospital, at 55 Palmer Avenue in Bronxville (Westchester County), seeks approval to certify a new extension clinic to be located on the 4th floor of 1111 Westchester Avenue in White Plains (Westchester County). The extension clinic will be certified for Ambulatory Surgery-Multispecialty including Orthopedics, General Surgery, Ophthalmology, Obstetrics/Gynecology, Urology, and ENT.

There will be 10 rooms on the 4th floor of Article 28 space. The Applicant reports that there are three ambulatory surgery sites in the PSA. Traveling to these sites, which can be further from their homes, can cause a fragmented experience for the patient and cause operational inefficiencies. The proposed project will focus on the patient experience and access closer to Westchester County and concurrently alleviate volume demands at other New York Presbyterian locations. The Applicant projects 8,423 procedures in the first year and 11,403 in the third year.

Staffing is expected to grow by 135.8 FTEs in Year One and 31.9.0 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.

Prevention Agenda

New York-Presbyterian Westchester is seeking approval to certify a new extension clinic to be located on the 4th floor of 1111 Westchester Avenue in White Plains (Westchester County). The extension clinic will be certified for Ambulatory Surgery-Multispecialty including Orthopedics, General Surgery, Ophthalmology, Obstetrics/Gynecology, Urology, and ENT.

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

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders
- Promote Healthy Women, Infants and Children
- Prevent Communicable Diseases

This project advances the Prevention Agenda's priorities 'Prevent Chronic Diseases' and 'Promote Healthy Women, Infants, and Children'. The Ambulatory Surgery Center will expand the access to the communities within the Hospital's service area, especially underserved populations.

The New York-Presbyterian Westchester spent \$50,651 on Community Benefits in 2018.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$169,322,634, broken down as follows:

	Ambulatory Surgery Sub-Project 1	Infusion & Rehabilitation Therapy Program Sub-Project 2	Total
Renovation & Demolition	\$48,678,000	\$23,475,000	\$72,153,000
Site Development	62,500	62,500	125,000
Design Contingency	4,914,300	2,347,500	7,261,800
Construction Contingency	4,914,300	2,347,500	7,261,800
Architect/Engineering Fees	2,257,000	2,257,000	4,514,000
Other Fees	9,355,078	4,117,793	13,472,871
Movable Equipment	47,176,387	9,749,296	56,925,683
Telecommunications	<u>1,313,304</u>	<u>5,367,006</u>	<u>6,680,310</u>
Sub-Total before Fees	\$118,670,869	\$49,723,595	\$168,394,464
CON Application Fee			2,000
CON Processing Fee			<u>926,170</u>
Total Project Cost			\$169,322,634

- Sub-Project #1 – 4th Floor- New Ambulatory Surgery Center (ten operating rooms, thirty pre-operative/recovery positions, clinical support, sterile processing).
- Sub-Project #2 – 3rd Floor – Infusion Center with twenty treatment positions, phlebotomy suite, laboratory, pharmacy. 4th Floor - space for the rehabilitation program.

The New York and Presbyterian Hospital (NYPH), the operator of NYPHW, will fund the \$169,322,634 project with equity. BFA Attachment B presents The New York and Presbyterian Hospital's 2021-2022 Certified Consolidated Financial Statements, which show sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted their first and third-year operating budgets in 2025 dollars, as summarized below:

	<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
<u>Revenues:</u>	<u>Per Visits</u>	<u>Total</u>	<u>Per Visits.</u>	<u>Total</u>
Outpatient Revenue	\$1,697	\$93,704,618	\$2,002	\$135,075,480
<u>Expenses:</u>				
Operating	\$1,616	\$89,230,490	\$1,508	\$101,800,710
Capital	<u>\$337</u>	<u>18,587,373</u>	<u>\$241</u>	<u>16,209,145</u>
Total Expenses	\$1,953	\$107,817,863	\$1,749	\$118,009,855
Net Income		<u>(\$14,113,245)</u>		<u>\$17,065,625</u>
Discharge		55,219		67,486

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

- Medicare revenue was calculated using the Medicare ASC fee schedule for Ambulatory Surgery. All other services and payors were based on historical rates per unit of service.
- Direct staffing expenses were based on staffing models developed for the respective services. Ancillary and supplies were based on historical utilization per unit of service. All other expenses, including staffing and non-staffing expenses, were modeled to support the operations.
- Utilization was based on a historical payor mix for respective services and the payor mix from a local medical practice.

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

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
<u>Payor:</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid -MC	8,817	15.97%	10,692	15.84%
Medicare-FFS	20,895	37.84%	25,347	37.56%
Commercial-MC	23,577	42.69%	29,242	43.33%
Other	<u>1,930</u>	<u>3.50%</u>	<u>2,205</u>	<u>3.27%</u>
Total	55,219	100%	67,486	100%

Capability and Feasibility

Total project costs of \$169,322,634 will be funded with equity from The New York and Presbyterian Hospital (NYPH), the operator of New York-Presbyterian Hospital Westchester.

Working capital will be provided from ongoing operations. New York-Presbyterian Hospital Westchester projects a non-cash operating loss of \$14,113,245 in the first year and a surplus of \$17,065,625 in the third year. While the first-year budget shows an operating loss of \$14,113,245, there's expected to be positive cash flow before the \$17,431,947 in non-cash depreciation expense. The New York-Presbyterian Hospital's Group Senior Vice President, Financial Officer, and Treasurer have submitted a letter committing to support the projected loss. The budget appears reasonable.

A review of BFA Attachment B, The New York and Presbyterian Hospital's 2021-2022 Certified Consolidated Financial Statements show \$2.580 billion in working capital, \$10.791 billion in net assets, and a positive operating income of \$201.2 million for 2022. BFA Attachment C, The New York and Presbyterian Hospital's September 30, 2023, internal consolidated financial statements show \$3.303 billion in working capital, \$11.757 billion in net assets, and a positive operating income of \$337.6 million for the period.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	The New York and Presbyterian Hospital – Network Description
BFA Attachment B	The New York and Presbyterian Hospital – 2021–2022 Certified Financial Statements
BFA Attachment C	The New York and Presbyterian Hospital – September 30, 2023, Internal Financial Statements



**Project # 231311-C
Samaritan Medical Center**

**Program: Hospital
Purpose: Construction**

**County: Jefferson
Acknowledged: July 14, 2023**

Executive Summary

Description

Samaritan Medical Center (SMC), a 290-bed not-for-profit hospital at 830 Washington Street, Watertown, requests approval to certify five (5) psychiatric beds in the existing Inpatient Mental Health Unit (IMHU) and perform requisite renovations. Currently, Samaritan Medical Center has a 34-bed IMHU with double patient rooms. This proposed project will allow SMC to fill more double occupancy rooms and serve patients requiring private rooms.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The applicant projects 10,136 psychiatric inpatient visits in Years One and Year Three, with Medicaid at 45%.

Program Summary

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

Financial Summary

Total project costs are \$712,950, which will be paid via equity from operations.

Budget (39 psychiatric beds):

	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues	\$6,185,219	\$6,185,219
Expenses	<u>5,884,732</u>	<u>5,884,732</u>
Excess Revenues	\$300,487	\$300,487

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 15, 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]

Approval conditional upon:

1. This project must be completed by **May 15, 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 **August 15, 2024**, and construction must be completed by **February 15, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. Once the renovations are completed, provide an architect's letter of substantial completion and schedule a pre-occupancy site visit with the OMH Central New York Field Office. [OMH]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

This project will treat patients in Jefferson County. Samaritan is in a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care. The population of Jefferson County is projected to increase to 114,226 by 2028, per Cornell Program on Applied Demographics. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Jefferson County	New York State
Total Population – 2021 Estimate	111,634	20,114,745
Hispanic or Latino (of any race)	7.7%	19.20%
White (non-Hispanic)	80.9%	54.70%
Black or African American (non-Hispanic)	5.5%	13.90%
Asian (non-Hispanic)	1.5%	8.60%
Other (non-Hispanic)	4.4%	3.60%

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

In 2020, 95.2% of the population in Jefferson County had health coverage as follows:

Employer Plans	33.9%
Medicaid	22.7%
Medicare	10.3%
Non-Group Plans	15.7%
Military or VA	12.6 %

Source: Data USA

Applicant Projected Payor Mix for Inpatient Services		
Payor	Year One	Year Three
Commercial	3.91%	3.91%
Medicare	26.03%	26.03%
Medicaid	45.01%	45.01%
Private Pay	1.70%	1.70%
Charity Care	0%	0%
Other	23.35%	23.35%

SHMC currently has 290 beds, 34 of which are inpatient mental health unit beds in double-bedded patient rooms, and is seeking approval to add 5 private inpatient beds for a total of 39 beds. According to the applicant, often double-bedded rooms are closed off due to clinical diagnoses and/or isolation reasons, including the gender of patients to create private rooms, which inhibits the unit from running at full occupancy. Currently, patients are transferred out to be treated elsewhere when SHMC is at full occupancy, often with patients being held in the ED awaiting a bed. This has caused a backlog of patients and longer wait times in the ED. The unit had 8,187 visits in the current year and projects 10,136 visits in Years One and Three. The addition of the 5 private rooms will give the ability to fill more double occupancy rooms and better serve the needs of patients by keeping off diversion and getting patients to inpatient psychiatric treatment in a timely manner.

Current and Projected Beds at Samaritan Hospital, Source HFIS/Applicant			
Bed Type	Current Beds	Bed Change	Beds Upon Completion
Coronary Care	4		4
Intensive Care	6		6
Maternity	29		29
Medical / Surgical	166		166
Neonatal Intensive Care	7		7
Neonatal Intermediate Care	8		8
Pediatric	20		20
Physical Medicine and Rehabilitation	16		16
Psychiatric	34	5	39
Total	290	5	295

According to the applicant, in 2021, SHMC had 24 beds available for use in the IMHU due to construction and renovation. As of January 1, 2023, SHMC had all 34 available beds in operation.

Samaritan Medical Center Psychiatric Inpatient Average Daily Census (ADC), Source: SPARCS and Applicant							
Historical/Current						Projected	
Year	2019	2020	2021	2022	2023	2024	2027
Psychiatric Inpatient	20	17	21	24	23	28	28

Conclusion

The addition of these beds will help with timely treatment for mental health patients, preventing the applicant from closing beds and improving patient flow and placement.

Program Analysis

Project Proposal

Samaritan Medical Center, a 290-bed not-for-profit acute care hospital at 830 Washington Avenue in Watertown (Jefferson County), seeks approval to certify five (5) additional inpatient mental health beds and perform requisite renovations of existing unoccupied space. Approval of the application will result in a net increase of five (5) mental health beds from 34 to 39 beds.

The Applicant reports that Samaritan is currently a 34-bed Inpatient Mental Health Unit that has double patient rooms. They are constantly unable to reach full occupancy due to the need for specific patients requiring single-bedded occupancy. The addition of five (5) private rooms will allow the facility the ability to fill more double occupancy rooms and better serve the needs of the patients by not having to call diversion. They will also be able to be received from the Behavioral Health ED faster and create a faster throughput and more timely treatment.

The Applicant reports that due to the patients being held in the Emergency Department because of capacity issues, the completion of the project will allow a safer and more timely admission process as well as timelier access to inpatient psychiatric treatment in the inpatient unit. This will also allow Emergency Department beds to be used for emergencies that are coming in.

Staffing is expected to increase as a result of this construction/expansion project by 58.2 FTEs in Year One of the completed project and increase by 58.2 FTEs by 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.

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

Prevention Agenda

Samaritan Medical Center seeks approval to certify five (5) additional inpatient mental health beds and perform requisite renovations of existing unoccupied space.

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

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

The proposed project advances the 'Promote Well-Being and Prevent Mental and Substance Use Disorders' priority and Jefferson County's care access. By creating private rooms, Samaritan Medical Center will address suicide prevention and opioid overdoses, which will allow patients to detox in a more private location and develop a treatment plan that is more tailored to their needs. In 2021, the Samaritan Medical Center spent \$209,382 on community health improvement services, representing 0.08 % of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and the acquisition of moveable equipment is estimated at \$712,950, detailed as follows:

Renovation and Demolition	\$542,999
Design Contingency	50,278
Construction Contingency	54,300
Architect/Engineering Fees	50,278
Moveable Equipment	9,206
CON Fees	2,000
Additional Processing Fee	<u>3,889</u>
Total Project Cost	\$712,950

The applicant will provide equity from operations to meet the total project cost.

Operating Budget

The applicant has submitted an operating budget for the 39 psychiatric beds, in 2023 dollars, for the first and third years, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
	<u>Per Day</u>	<u>Revenue</u>	<u>Per Day</u>	<u>Revenue</u>	<u>Per Day</u>	<u>Revenue</u>
Revenues:						
Commercial FFS	\$971	\$320,399	\$930	\$367,516	\$930	\$367,516
Medicare FFS	\$1,636	\$1,920,195	\$1,572	\$2,202,577	\$1,572	\$2,202,577
Medicare MC	\$764	\$811,665	\$757	\$931,028	\$757	\$931,028
Medicaid FFS	\$575	\$275,587	\$450	\$316,115	\$450	\$316,115
Medicaid MC	\$141	\$462,644	\$138	\$530,680	\$138	\$530,680
Private Pay	\$2,467	\$365,077	\$2,435	\$418,765	\$2,435	\$418,765
Other	\$816	\$1,388,845	\$786	\$1,612,464	\$786	\$1,612,464
Bad Debt		<u>0</u>		<u>(\$193,926)</u>		<u>(\$193,926)</u>
Total Revenues		\$5,544,412		\$6,185,219		\$6,185,219
Expenses:						
Operating	\$650.83	\$5,328,305	\$569.04	\$5,767,813	\$569.04	\$5,768,713
Capital	<u>3.19</u>	<u>26,130</u>	<u>\$11.48</u>	<u>116,019</u>	<u>\$11.48</u>	<u>116,019</u>
Total Expenses	\$654.02	\$5,354,435	\$580.52	\$5,884,732	\$569.52	\$5,884,732
Excess Revenues		\$189,977		\$300,487		\$300,487
Patient Days		8,187		10,108		10,108

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

- Expense assumptions are based on the historical experience in operating psychiatric beds.
- Utilization assumptions are based on the historical experience in operating psychiatric beds.
- Revenues were based on current reimbursement methodologies.

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

	<u>Current Year</u> <u>(2022)</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	4.03%	3.91%	3.91%
Medicare FFS	14.34%	13.86%	13.86%
Medicare MC	12.97%	12.17%	12.17%
Medicaid FFS	5.85%	6.95%	6.95%
Medicaid MC	40.20%	38.06%	38.06%
Private Pay	1.81%	1.70%	1.70%
Other	<u>20.80%</u>	<u>23.50%</u>	<u>23.50%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The total project cost of \$712,950 will be paid with equity from operations. Presented as BFA Attachment A is the 2022 Certified Financial Statements of Samaritan Medical Center and Affiliates, which shows that the hospital has sufficient funds for the equity contribution.

The submitted budget indicates an incremental net income of \$300,487 and \$300,487 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for psychiatric services. The submitted budget appears reasonable.

As shown in Attachment A, the hospital has maintained a positive working capital position and a positive net asset position in 2022. Also, the hospital achieved an operating income of \$444,477 in 2022.

Conclusion

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

Attachments

BFA Attachment A	2022 Certified Financial Statements of Samaritan Medical Center and Affiliates.
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**Project # 231326-C
Auburn Community Hospital**

Program: Hospital
Purpose: Construction

County: Cayuga
Acknowledged: July 26, 2023

Executive Summary

Description

Auburn Community Hospital (ACH), a 99-bed, voluntary not-for-profit, Article 28 acute care hospital at 17 Lansing Street, Auburn (Cayuga County), requests approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services. The PCI lab will be in a second Interventional Radiology (IR) Suite. Limited Review Application (LRA) 231365, to expand and upgrade the Interventional Radiology Suite, is concurrently under review by the Department.

Auburn Community Hospital has a letter of intent from St. Joseph's Hospital Health Center (SJHHC) to provide a clinical sponsorship for Cardiac Catheterization and PCI services at ACH.

The implementation of Cardiac Catheterization - PCI services at ACH is a precursor to a soon-to-be-built Auburn Heart Institute on the ACH's campus. In February 2023, ACH was awarded \$21M through a NYS Statewide Health Care Facility Program III Transformation Grant for the Auburn Heart Institute. The program will be led by Ronald Kirshner, M.D., a cardiothoracic surgeon.

Establishing Cardiac Catheterization and PCI services at ACH will alleviate the need to transfer patients with time-sensitive outcomes. Currently, patients must travel to Syracuse or Rochester.

OPCHSM Recommendation

Contingent Approval is recommended.

Need Summary

In 2022, 131 Cayuga County residents were treated outside of the county for emergency PCI procedures. The applicant projects approximately 75 PCI procedures in Year One (40 emergency) and 125 PCI (64 emergency) procedures by Year Three.

Program Summary

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

Financial Summary

Project costs of \$53,281 will be funded with equity from Auburn Community Hospital.

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Revenues	\$8,387,024	\$11,040,755
Expenses	<u>6,583,257</u>	<u>7,246,432</u>
Net Income	\$1,803,767	\$3,794,323

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 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. Submission of an executed sponsorship agreement with a New York State Cardiac Surgery Center, acceptable to the Department of Health. [HSP]
3. Submission of an executed Cardiac Catheterization Clinical Sponsorship acceptable to the Department of Health. [BFA]
4. Approval contingent on Department of Health approval of related LRA Project 231365. [CCC]

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. Conditional on performing a minimum of 36 emergency Percutaneous Coronary Interventions per year of operations in accordance with Regulation 405.29 (e)(2)(iv) minimum workload standards. [HSP]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area is Cayuga County. Auburn Community Hospital is within a Health Professional Shortage Area for Primary Care. The population of Cayuga County was 76,644 in 2021 and is projected to decrease to 75,186 by 2028 based on Cornell Program on Applied Demographics estimates. Cayuga County's 65+ population was 14,696 in 2021 and is expected to increase to 17,104, an increase of 16.4%.

Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Cayuga County	New York State
Total Population	76,644	20,114,745
Hispanic or Latino (of any race)	3.1%	19.20%
White (non-Hispanic)	88.8%	54.70%
Black or African American (non-Hispanic)	3.9%	13.90%
Asian (non-Hispanic)	0.7%	8.60%
Other (non-Hispanic)	3.5%	3.60%

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

According to Data USA, in 2020, 95.7% of the population in Cayuga County had health coverage as follows.

Employer Plans	48.0%
Medicaid	19.4%
Medicare	14.5%
Non-Group Plans	11.9%
Military or VA	1.85 %

Applicant Projected Payor Mix				
Payor	Year One	Year Three	Year One	Year Three
	Inpatient Services		Outpatient Services	
Commercial	5.88%	5.03%	5.00%	5.00%
Medicare	84.31%	86.79%	86.00%	85.98%
Medicaid	6.86%	6.92%	7.00%	7.02%
Charity Care	2.94%	1.26%	2.00%	2.01%

The applicant projects 75 PCI procedures in Year One (40 emergency) and 125 PCI procedures (64 emergency) by Year Three.

In 2022, Cayuga residents received 189 PCI treatments as classified under New York Title 10 Cardiac Services Regulation 709.14. Of these, 0 procedures were performed in Cayuga County. Currently, most Cayuga residents are seeking PCI procedures at St. Joseph's Hospital which is 28.3 miles or 39-minute travel time from Auburn Community Hospital, the only Hospital in Cayuga County. Decreasing Door to Balloon time in emergency PCI cases has been shown in many studies to be significantly associated with survival benefits. The table below shows hospitals where PCI treatments were performed for Cayuga County residents and their distance from Auburn Community Hospital.

2022 Total/Emergency PCI's Performed on Cayuga Residents				
Hospital Name	County	Distance/Time from Applicant	Total Cases	Emergency
Upstate University Hospital	Onondaga	21.8 miles/35 min	8	6
St. Joseph's Hospital	Onondaga	28.3 miles/39 min	132	84
Crouse Hospital	Onondaga	29 miles/39 min	17	15
Cayuga Medical Center	Tompkins	40.5 miles/57 min	7	6
Strong Memorial Hospital	Monroe	64 miles/1 hr 12 min	10	7
Rochester General Hospital	Monroe	65.2 miles/1 hr 10 min	5	4
Arnot Ogden Medical Center	Chemung	72.2 miles/1 hr 38 min	2	2
Bassett Medical Center	Otsego	121 miles/2 hr 6 min	2	2
Buffalo General Medical Center	Erie	125 miles/2 hr 2 min	1	1
St. Peter's Hospital	Albany	171 miles/2 hr 38 min	1	0
Albany Medical Center	Albany	172 miles/2 hr 40 min	4	4
Total			189	131

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

Conclusion

By providing PCI-capable Cardiac Catheterization services, Auburn Community Hospital anticipates the achievement of the following goals:

- Reduced travel times for access to PCI procedures for residents.
- Improved cardiac health outcomes for residents of the ACH service area who experience poor cardiac health outcomes.
- This project will also enhance ACH's designation by the New York State Department of Health as a Primary Stroke Center and help grow the Auburn Heart Institute.
- Promote Auburn's future sustainability.

Program Analysis

Project Proposal

Auburn Community Hospital (Auburn), a 99-bed acute care hospital at 17 Lansing Street, Auburn, New York 13021 (Cayuga County), requests approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services. St. Joseph's Hospital Health Center (SJHHC) has submitted a Letter of Intent to serve as the PCI Clinical Sponsor. SJHHC, a 451-bed facility at 301 Prospect Avenue in Syracuse, NY, is a full-service cardiac surgery provider.

Auburn's Primary service area is the city of Auburn, NY, as well as surrounding towns in Cayuga County. The service area envelopes the western borders of Onondaga County, the eastern edges of Seneca County, and the northern borders of Tompkins County. SJHHC is 33.5 miles and 39 minutes from Auburn Community Hospital. Auburn's analysis of 2021 data shows an outmigration of 382 cardiac catheterization cases for patients living in the Auburn primary and secondary service areas. This includes 348 inpatient and outpatient catheterization cases transferred to St. Joseph's, as well as 34 cases transferred to other facilities.

The catheterization laboratory team will be a 4-person team consisting of one (1) radiation technologist and three (3) RNs. Auburn Community Hospital is planning an 8-hour scheduled outpatient catheterization lab with 24/7 coverage on call.

The Applicant anticipates 34-40 emergency Percutaneous Coronary Interventions in the first year of operations and a total of 413 catheterizations and interventions within two years of start-up. There are seven (7) interventional cardiologists at St. Joseph's Hospital. The Applicant reports St. Joseph's volume as being one of the highest in the region. Per the Department of Health Cardiac Department, in 2020, St. Joseph's performed 337 emergent Percutaneous Coronary Interventions - 323 in 2021 and 311 in 2022. This is draft data due to the impacts of COVID-19.

The implementation of this project will result in up to 80% of current procedures being sent to providers outside of their market for advanced cardiovascular care remaining within the service area by Year Five. Auburn further plans a fully functioning heart institute by Year Five. Auburn's Cardiology services include four (4) board-certified cardiologists. Dr. Ronald Kirshner is the Medical Director of the Cardiac Catheterization Lab and is registered through August 2025.

The implementation of this project, as well as the larger Auburn Heart Institute, will (1) address the prevention of chronic disease, (2) Improve health status and reduction of health disparities, and (3) result in bringing services closer to home, especially for lower-income patients, requiring less travel time and expense, less time away from work and less cost for childcare coverage during appointments or procedures. Staffing is expected to increase by 17.8 FTEs in the first year after completion and 18.8 FTEs in the third year of operation.

The Applicant has submitted a written plan that demonstrates their ability to comply with all the standards for PCI Capable Cardiac Catheterization Laboratories, and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5).

Prevention Agenda

Auburn Community Hospital in Cayuga County is seeking approval to establish a Percutaneous Coronary Intervention (PCI) lab. The cardiac PCI lab will address unmet needs and health disparities that exist for the rural population of Cayuga County, who are at high risk for cardiovascular disease and primarily (79%) served by Medicaid and Medicare.

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

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders
- Promote Healthy Women, Children, and Infants
- Promote a Healthy and Safe Environment

Establishing the PCI lab advances the Prevention Agenda priority 'Prevent Chronic Diseases' and improves health status and reduces health disparities. It also brings services closer to Cayuga County, benefiting lower-income patients by lowering costs, travel time, and expenses.

In 2021, Auburn Community Hospital spent \$10,127,869 on community benefits. However, the total reported spending on community health improvement services and community benefit operations was zero.

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

Project costs are estimated at \$53,281, broken down as follows:

Movable Equipment (Software Lease)	\$51,000
Application Fee	2,000
Additional Fee for Projects	<u>281</u>
Total Project Cost with Fees	\$53,281

The applicant will fund the total project cost with liquid resources. BFA Attachment A presents Auburn Community Hospital and Affiliates' 2021- 2022 Certified Financial Statements and shows sufficient resources to fund the project.

Operating Budget

The applicant has submitted an incremental operating budget, in 2023 dollars, for Year one and Year Three, as summarized below:

	<u>First Year</u> <u>2024</u>		<u>Third Year</u> <u>2026</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Revenues-Inpatient:				
Medicaid FFS	\$22,738	\$90,952	\$19,123	\$133,863
Medicaid MC	\$19,617	58,852	\$21,654	86,617
Medicare FFS	\$21,652	736,181	\$19,700	1,083,501
Medicare MC	\$21,236	1,104,271	\$19,581	1,625,251
Commercial FFS	\$18,726	74,902	\$18,373	110,240
Commercial MC	\$16,051	32,101	\$23,623	47,246
Subtotal Inpatient		\$2,097,259		\$3,086,718
Revenues-Outpatient:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$1,574	\$284,961	\$1,332	\$364,858
Medicaid MC	\$1,640	191,893	\$1,397	247,344
Medicare FFS	\$1,475	2,159,606	\$1,237	2,732,848
Medicare MC	\$1,475	3,239,409	\$1,237	4,099,271
Commercial FFS	\$1,592	237,227	\$1,352	304,301
Commercial MC	\$1,589	101,669	\$1,358	130,415
Other -340B		<u>75,000</u>		<u>75,000</u>
Subtotal Outpatient		\$6,289,765		\$7,954,037
Total Revenue		\$8,387,024		\$11,040,755
Expense-Inpatient:				
Operating	\$16,243	\$1,656,774	\$12,799	\$2,034,991
Capital	<u>\$42</u>	<u>4,289</u>	<u>\$30</u>	<u>4,786</u>
Subtotal Expenses	\$16,285	\$1,661,063	\$12,829	\$2,039,777
Expense-Outpatient				
Operating	\$1,154	\$4,909,483	\$808	\$5,194,440
Capital	<u>\$3</u>	<u>12,711</u>	<u>\$2</u>	<u>12,215</u>
Subtotal Expenses	\$1,157	\$4,922,194	\$810	\$5,206,655
Total Expenses		<u>\$6,583,257</u>		<u>\$7,246,432</u>
Net Income		\$1,803,767		\$3,794,323
Inpatient discharges		102		159
Outpatient visits		4,256		6,426

The following is noted concerning the operating budget:

- Revenues reflect an analysis from Corazon based on their national database and revenues for outpatient visits.
- The projected expenses are based on staffing guidelines and input provided by Corazon and St. Joseph's Hospital Health Center. The budget reflects the additional clinical services agreement expenses.
- Utilization is based on analysis of invasive procedures referred to other markets and facilities, along with current non-invasive volume, to assist in the volume projections. Auburn Community Hospital is projected to retain ER STEMI transfer volume once they offer interventional cardiology services.
- Utilization by payor source is as follows:

<u>Inpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Payor:	<u>Discharge</u>	<u>%</u>	<u>Discharge</u>	<u>%</u>
Medicaid FFS Commercial FFS	4	3.93%	7	4.40%
Medicaid MC Commercial MC	3	2.94%	4	2.52%
Medicare FFS	34	33.33%	55	34.59%
Medicare MC	52	50.98%	83	52.20%
Commercial FFS	4	3.93%	6	3.77%
Medicaid FFS				
Commercial MC	2	1.95%	2	1.26%
Medicaid MC				
Charity	<u>3</u>	<u>2.94%</u>	<u>2</u>	<u>1.26%</u>
Total	102	100%	159	100%

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Payor:	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	181	4.25%	274	4.26%
Commercial FFS				
Medicaid MC	117	2.75%	177	2.75%
Commercial MC				
Medicare FFS	1,464	34.40%	2,210	34.40%
Medicare MC	2,196	51.60%	3,315	51.59%
Commercial FFS	149	3.50%	225	3.50%
Medicaid FFS				
Commercial MC	64	1.50%	96	1.49%
Medicaid MC				
Charity	<u>85</u>	<u>2.00%</u>	<u>129</u>	<u>2.01%</u>
Total	4,256	100%	6,426	100%

Cardiac Catheterization Clinical Sponsorship - Letter of Intent

The applicant has submitted a letter of intent for a Cardiac Catheterization Clinical Sponsorship Agreement regarding the operation and oversight of a cardiac catheterization suite on-site at ACH. The letter is summarized below:

Client:	Auburn Community Hospital (ACH)
Provider:	St. Joseph's Hospital Health Center (SJHHC)
Services:	SJHHC will serve as a clinical sponsor of the Cath Lab at ACH. SJHHC will participate in ACH's quality assurance committee and review ACH data for quality improvement. Hold quarterly joint cardiology/cardiac surgery conferences. Have a telemedicine link between ACH and SJHHC. Participate in developing criteria for physicians performing cardiac catheterization procedures at ACH. Develop and conduct an ongoing review of patient selection criteria. Consult on equipment, staffing, ancillary services, and policies and procedures. Develop a pre-procedure risk stratification tool to ensure that high-risk and or

	complex cases are treated at SJHHC. Develop patient transfer procedures. Communicate any changes to the proper authority. Develop a plan for rotating staff and providing training opportunities. Develop a plan for delivering around o'clock PCI services all year.
Term	Three years.
Fee	\$2.1 million per year

Capability and Feasibility

Project costs of \$53,281 will be funded with equity from Auburn Community Hospital. Total working capital is estimated at \$1,207,739 based on two months of third-year expenses. Funding will be provided from the ongoing operations and the program's positive operating margin. The submitted budget demonstrates a net income of \$1,803,767 and \$3,794,323 in Year One and Year Three, respectively. The budget appears reasonable.

Review of BFA Attachment A, Auburn Community Hospital's 2021-2022 Certified Financial Statements shows negative working capital, positive net assets, and a loss from operations. It is expected that the proposed PCI Lab's positive contribution margin will help stem ACH's losses.

Per the notes from AHC's 2022 Certified Financial Statements, management has been developing and executing strategic plans to reduce the Hospital's operational losses and increase cash flows during 2023 by working with federal and state agencies to provide grants and support, obtaining additional cash flow through a debt financing, undertaking various revenue cycle and cost saving initiatives and expanding services provided.

Beginning in 2022, ACH has submitted Federal Emergency Management Agency (FEMA) applications totaling approximately \$19.7M for reimbursement of COVID-related expenses related to the Federal Emergency Declaration for the period through July 1, 2022, of which approximately \$2.2M was received in October 2022. ACH anticipates receiving roughly \$10.3M in additional FEMA funding. The Hospital plans to submit an additional application for July 2, 2022, through May 11, 2023, the date the Federal Emergency ended.

During 2023, the Hospital received approximately \$12.2M in Vital Access Provider Assistance Program funding from NYS. In February 2023, the Hospital was awarded a \$21M Statewide Health Care Facility Program III Transformation Grant for operating room and cardiology program expansion.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Auburn Community Hospital 2021-222 Certified Financial Statements



Project # 231351-C
St. Charles Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: July 24, 2023

Executive Summary

Description

St. Charles Hospital (St. Charles), an existing not-for-profit 243-bed acute care hospital in Port Jefferson (Suffolk County), seeks approval for the certification and licensure of Cardiac Catheterization - Adult Diagnostic and Cardiac Catheterization - Percutaneous Coronary Angioplasty, a PCI capable cardiac catheterization laboratory and Adult - Electrophysiology services. This will include the requisite renovation of space and acquisition of equipment to accommodate one catheterization laboratory and support space for these services. The applicant will renovate 2,815 square feet on the ground floor of the hospital's east wing. The project will include one procedure room, a control room, three recovery bays, and other support areas.

St. Francis Hospital and Heart Center (St. Francis HC) will be responsible for clinical sponsorship and oversight of this program. The program, upon approval, will be known as the St. Francis Heart Center at St. Charles Hospital, which is already designated a Primary Stroke Center by the Department. St. Charles Hospital and St. Francis Heart Center are part of Catholic Health, an extensive health system on Long Island. Catholic Health is the active parent and co-hospital operator of both entities.

In 2022, St. Charles transferred 80 cardiac-related discharges out of the hospital, with nearly 50% staying within the Catholic Health network. Approximately 27 of the 80 transfers were related to acute myocardial infarctions. Implementing this project will enable St. Charles to perform these procedures for patients in a more convenient, local facility while providing

continuity of care. Three interventional cardiologists have committed to providing diagnostic catheterization and PCI procedures at the proposed PCI-capable cardiac catheterization laboratory, and four electrophysiologists have committed to providing EP-related procedures.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects approximately 150 total PCI procedures (36 emergency) in Year One and 156 total PCI (36 emergency) procedures by Year Three.

Program Summary

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

Financial Summary

Total project costs of \$6,818,571 will be funded with equity from Catholic Health.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$246,324,084), Expenses (245,292,190), Net Income (\$1,031,894).

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 20, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **April 15, 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 15, 2024**, and construction must be completed by **January 15, 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

February 8, 2024

Need Analysis

Background and Analysis

The primary service area is Suffolk County. St. Charles Hospital is within a Health Professional Shortage Area for Primary Care and Mental Health. The population of Suffolk County was 1,522,998 in 2021 and is projected to decrease to 1,492,157 by 2028. The County's 65+ population was 257,678 in 2021 and is expected to increase to 345,320, an increase of 34% based on the Cornell Program on Applied Demographics estimates.

Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Suffolk County	New York State
Total Population – 2021 Estimate	1,522,998	20,114,745
Hispanic or Latino (of any race)	19.9%	19.20%
White (non-Hispanic)	66.4%	54.70%
Black or African American (non-Hispanic)	6.9%	13.90%
Asian (non-Hispanic)	4.0%	8.60%
Other (non-Hispanic)	2.8%	3.60%

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

In 2020, 95.8% of the population in Suffolk County had health coverage as follows.

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13%
Non-Group Plans	12.4%
Military or VA	0.501%

Source: Data USA

Applicant Projected Payor Mix for Inpatient Services		
Payor	Year One	Year Three
Commercial	36.04%	36.03%
Medicare	31.61%	31.61%
Medicaid	30.48%	30.48%
Private Pay	0.70%	0.70%
Other	1.17%	1.18%

Applicant Projected Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	42.23%	42.23%
Medicare	31.02%	31.02%
Medicaid	19.79%	19.79%
Private Pay	3.17%	3.17%
Other	3.79%	3.79%

The applicant projects 150 PCI procedures by Year One and 156 in Year Three, with 36 emergency PCIs each year. St. Charles has entered into an affiliation agreement with St. Francis Hospital that follows the regulatory requirements of NCYRR 10 709.14 and 405.29.

In the most recent data year, St. Francis had 285 inpatient discharges originating from St. Charles Hospital's primary service area. Of those discharges, 156 were PCI, diagnostic cath and EP patients. With clinical support from St. Francis, St. Charles expects to treat 70-75% of these patients.

St. Francis also performed 240 outpatient PCI, diagnostic cath and EP procedures on patients from St. Charles Hospital's service area. There is no reason that those procedures would not go to St. Charles once their program is operational. In 2022, St. Charles transferred 80 cardiac patients who could have

been treated at their facility had they had the services. Of these, 27 transfers were related to acute myocardial infarction.

The table below shows Suffolk County residents received 5,868 PCI treatments as classified under NCYRR 10 709.14 Cardiac Services. Of these, 4,402 procedures were performed in Suffolk.

Suffolk County Residents Receiving Treatment in 2022			
	Treated In-County	Treated Out-of-County	Total
County Residents Treated for PCI	4,402	1,466	5,868
County Residents Receiving Emergency PCI Treatment	3,230	879	4,109

Source: Cardiac Services

The table below shows hospitals where PCI treatments were performed for Suffolk County residents.

2022 Total/Emergency PCI's Performed on Suffolk Residents, Source Cardiac Services				
Hospital Name	County	Distance/Time from Applicant	2022 Total Cases	2022 Emergency
John T. Mather Memorial	Suffolk	0.7 miles/2 min	222	185
Stony Brook University	Suffolk	6 miles/14 min	1046	737
St. Catherine of Siena	Suffolk	13 miles/30 min	248	227
Long Island Community	Suffolk	15 miles/ 32 min	305	264
Peconic Bay Medical Ctr	Suffolk	22 miles/44 min	265	189
Huntington Hospital	Suffolk	25 miles/ 55 min	393	288
South Shore University	Suffolk	26 miles/47 min	723	546
Good Samaritan University	Suffolk	30 miles/48 min	1143	753
NYU Langone Hospital	Nassau	40 miles/1 hr 6 min	304	256
St. Francis Hospital	Nassau	41 miles/1 hr 7 min	635	347
North Shore University	Nassau	43 miles/1 hr 5 min	229	108
Stony Brook Southampton	Suffolk	46 miles/1 hr 5 min	57	41
Mount Sinai South Nassau	Nassau	47 miles/1 hr 18 min	64	33
NYU Langone Health	Manhattan	58 miles/1 hr 42 min	44	27
Mount Sinai Hospital	Manhattan	61 miles/1 hr 43 min	75	41
Lenox Hill Hospital	Manhattan	61 miles/1 hr 46 min	11	7
NYP Hospital - New York	Manhattan	61 miles/1 hr 50 min	20	9
NYP Hospital - Columbia	Manhattan	61 miles/1 hr 52 min	21	4
Total Cases from Hospitals with 10 or less Total Cases	Various		63	47
Total			5868	4109

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

Conclusion

Approval of this project will allow patients presenting at St. Charles to be treated there instead of being transferred to other facilities.

Program Analysis

Project Proposal

St. Charles Hospital (St. Charles), an existing not-for-profit, 243-bed acute care hospital in Port Jefferson, Suffolk County, seeks approval for the certification and licensure for Cardiac Catheterization - Adult Diagnostic and Cardiac Catheterization - Percutaneous Coronary Angioplasty, a PCI capable cardiac catheterization laboratory, and Adult - Electrophysiology services. This will include the requisite renovation of space and acquisition of equipment to accommodate one catheterization laboratory and support space for these services. The program, upon approval, will be known as the St. Francis Heart Center at St. Charles Hospital.

The proposed program has entered into a Clinical Sponsorship Agreement with St. Francis Hospital and Heart Center (St. Francis) in Roslyn, NY, to serve as the PCI and EP clinical Sponsor. St. Francis is a 364-bed facility located at 100 Port Washington Boulevard in Roslyn, NY, that is a full-service cardiac surgery provider. St. Charles' Primary service area is Suffolk County, NY, representing 68% of the hospital's overall medical-surgical discharges in 2022. The area represents over 1 million people. St. Francis is 33 miles from the facility and 60 minutes travel time. St. Charles reports an analysis of 2022, with 80 cardiac-related discharges out of the hospital for a higher level of care. In 2021, 84 patients (17.2%) were transferred to St. Francis for PCI procedures. Similarly, EP procedures in 2021 represented 15% seeking care at St. Francis.

The catheterization laboratory team will include three interventional cardiologists and four electrophysiologists. The program will operate 7 am - 5 pm, Monday - Friday for scheduled procedures. Staff will be on call 24/7/365 for emergency and critical cases. The EP lab will not be serving patients between the ages of 12 - 18.

Dr. Allen Jeremias will serve as the Medical Director for the PCI laboratory. Dr. Jeremias completed medical training at The Cleveland Clinic Foundation, Stanford University School of Medicine, and Harvard Medical School. He has been an interventional cardiologist since 2006. Dr. Richard Shlofmitz is the chairman of Cardiology at St. Francis Hospital. Dr. Shlofmitz will have ultimate responsibility for the oversight of St. Francis Heart Center at St. Charles Hospital. He has practiced at St. Francis Hospital since 1987. He completed cardiology and Interventional Cardiology training at Columbia University.

The three (3) interventional cardiologists are Dr. Allen Jeremias, Dr. Michael Rosenband, and Dr. Ezra Deutsch. The two (2) electrophysiologists are Dr. Armen Ovsepian and Dr. Abram Mozes.

Prevention Agenda

The St. Charles Hospital, in Suffolk County, seeks approval to 1) certify Cardiac Catheterization - Adult Diagnostic, Cardiac Catheterization - Percutaneous Coronary Angioplasty (PCI) and Adult – Electrophysiology (EP) services, and 2) renovate space and acquire equipment to accommodate one cardiac catheterization laboratory and support space for these services.

The St. Charles Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Preventing Chronic Diseases
- Promote a Healthy and Safe Environment
- Promote Healthy Women, Infants and Children
- Promote Wellbeing and Prevent Mental and Substance Use Disorders
- Prevent Communicable Disease

The proposed project advances the Prevention Agenda priority 'Prevent Chronic Diseases.' The project will enhance access to cardiac procedures and improve cardiac health outcomes for residents of the St. Charles service area who experience poor cardiac health outcomes. The new services will enable St. Charles to perform procedures for patients in a more convenient, local facility while providing continuity of care.

In 2021, the St. Charles Hospital spent \$655,519 on community health improvement services, representing 0.28% of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovation and moveable equipment are estimated at \$6,818,571, broken down as follows:

Renovation & Demolition	\$3,120,000
Design Contingency	\$312,000
Construction Contingency	\$312,000
Architect/Engineering Fees	\$312,000
Construction Manager Fees	\$234,000
Other Fees	\$35,092
Movable Equipment	\$2,454,193
Application Fee	\$2,000
Additional Fee for Projects	<u>\$37,286</u>
Total Project Cost with Fees	\$6,818,571

The applicant's financing plan is as follows:

Equity - Catholic Health	<u>\$6,818,571</u>
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Catholic Health has provided a commitment letter to fund the project. BFA Attachments A presents the Catholic Health 2021-2022 Certified Financial Statements, which shows sufficient liquid resources to fund the project.

Operating Budget

The applicant has submitted their current year (2022) and projected operating budgets for the first and third years in 2024 dollars, summarized below:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>2022</u>		<u>2024</u>		<u>2026</u>	
Revenues	<u>Per</u>	<u>Total</u>	<u>Per</u>	<u>Total</u>	<u>Per</u>	<u>Total</u>
	<u>Disch.</u>	<u>Total</u>	<u>Disch.</u>	<u>Total</u>	<u>Disch.</u>	<u>Total</u>
Inpatient:						
Medicaid FFS	\$4,576	\$1,400,309	\$4,638	\$1,433,109	\$4,642	\$1,434,434
Medicaid MC	\$5,405	15,420,752	\$5,474	15,781,964	\$5,477	15,796,557
Medicare FFS	\$19,073	47,721,006	\$19,319	48,838,811	\$19,322	48,883,970
Medicare MC	\$17,493	13,539,504	\$17,719	13,856,650	\$17,736	13,869,463
Commercial FFS	\$12,457	1,494,833	\$12,239	1,529,848	\$12,250	1,531,262
Commercial MC	\$18,034	65,119,504	\$18,264	66,644,846	\$18,276	66,706,470
Private Pay	\$1,215	87,468	\$1,226	89,517	\$1,279	89,599
All Other	\$15,160	<u>1,849,582</u>	\$15,389	<u>1,892,906</u>	\$15,279	<u>1,894,657</u>
Subtotal Inpatient		\$146,632,958		\$150,067,651		\$150,206,412
Outpatient:						
Medicaid FFS	<u>\$454</u>	<u>\$455,448</u>	<u>\$466</u>	<u>\$469,143</u>	<u>\$466</u>	<u>\$469,697</u>
Medicaid MC	\$413	5,063,103	\$423	5,215,354	\$424	5,221,505
Medicare FFS	\$1,266	20,634,997	\$1,298	21,255,506	\$1300	21,280,575
Medicare MC	\$1,185	5,343,661	\$1,216	5,504,348	\$1,217	5,510,840
Commercial FFS	\$1,639	744,327	\$1,681	766,709	\$1,683	767,613
Commercial MC	\$1,859	51,821,630	\$1,907	53,379,943	\$1,909	53,442,899
Private Pay	\$343	729,753	\$352	751,698	\$353	752,584
All Other	\$1,132	<u>2,880,123</u>	\$1,162	<u>2,966,732</u>	\$1,163	<u>2,970,230</u>
Subtotal-outpatient		\$87,673,042		\$90,309,433		\$90,415,943
Other Operating *		<u>\$5,947,000</u>		<u>\$5,947,000</u>		<u>\$5,947,000</u>
Total Revenue		\$240,253,000		\$246,324,084		\$246,569,355

	<u>Current Year</u> <u>2022</u>	<u>First Year</u> <u>2024</u>	<u>Third Year</u> <u>2026</u>
Expenses			
Operating	\$231,669,900	\$236,652,750	\$236,720,550
Capital	<u>8,165,000</u>	<u>8,639,440</u>	<u>8,639,440</u>
Total Expenses	\$239,834,900	\$245,292,190	\$245,359,990
Net Income (Loss)	\$418,100	\$1,031,894	\$1,209,365
Inpatient discharges	10,360	10,472	10,477
Outpatient Visits	67,074	67,362	67,374
<i>* Other Revenue Income: Grant Income \$1,191,315, Rental Income \$1,923,483, Coffee Shop \$665,109, Pharmacy 340b \$93,122, concussion management services \$244,141, Hospice Port Jeff chargebacks \$366,708, Brookhaven physical therapy services \$867,992, and other \$595,130.</i>			

The following is noted concerning the operating budget:

- The current year reflects the facility's 2022 revenue and expenses.
- Reimbursement rate assumptions are based on St. Francis HC's current average reimbursement for each type of procedure for inpatient and outpatient cases.
- The projected expenses are based on the experience of Catholic Health in providing these services.
- Almost half of Catholic Health procedural volume for cardiac catheterization, PCI, and EP are generated out of St. Charles primary service area (PSA) and performed at St. Francis Hospital Heart Center in Nassau County. St. Francis has proposed to support the foundational volume at St. Francis Heart Center at St. Charles Hospital. The volume assumptions for the new program will be primarily from:
 - Diagnostic catheterization and PCI volume originating in the St. Charles market but receiving care at St. Francis HC and St. Catherine of Siena Hospital (St. Catherine), including current cardiac transfer from St. Charles to Catholic Hospitals and alternative health systems. Approximately 50% of the cases could remain at St. Charles.
 - Electrophysiology volume originating in the St. Charles market area but receiving care at St. Francis HC and St. Catherine, including current cardiac transfer from St. Charles to CH's hospitals and alternative health systems. Approximately 64 electrophysiology cases were performed by physicians who will support St. Charles's lab.

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

<u>Inpatient</u>	<u>Current Year (2022)</u>		<u>Year One (2024)</u>		<u>Year Three (2026)</u>	
Medicaid-FFS	306	2.95%	309	2.95%	309	2.95%
Medicaid-MC	2,853	27.55%	2,883	27.53%	2,884	27.53%
Medicare-FFS	2,502	24.15%	2,528	24.15%	2,530	24.15%
Medicare-MC	774	7.47%	782	7.47%	782	7.46%
Commercial FFS	120	1.16%	125	1.19%	125	1.19%
Commercial MC	3,611	34.85%	3,649	34.84%	3,650	34.84%
Private Pay	72	.69%	73	.70%	73	.70%
All Other	<u>122</u>	<u>1.18%</u>	<u>123</u>	<u>1.17%</u>	<u>124</u>	<u>1.18%</u>
Total Inpatient	10,360	100%	10,472	100%	10,477	100%
<u>Outpatient</u>						
Medicaid-FFS	1,003	1.50%	1,007	1.49%	1,007	1.49%
Medicaid-MC	12,268	18.29%	12,321	18.29%	12,323	18.29%
Medicare-FFS	16,299	24.30%	16,369	24.30%	16,372	24.30%
Medicare-MC	4,508	6.72%	4,528	6.72%	4,528	6.72%
Commercial FFS	454	.68%	456	.68%	456	.68%
Commercial MC	27,873	41.55%	27,993	41.56%	27,998	41.56%
Private Pay	2,125	3.17%	2,134	3.17%	2,135	3.17%
All Other	<u>2,544</u>	<u>3.79%</u>	<u>2,554</u>	<u>3.79%</u>	<u>2,555</u>	<u>3.79%</u>
Total Outpatient	67,074	100%	67,362	100%	67,374	100%

Clinical Sponsorship Agreement

The applicant has submitted an executed Sponsorship Agreement regarding operating and overseeing an adult cardiac catheterization suite on-site at St. Charles Hospital. The terms are summarized below:

Date	June 14, 2023
Client:	St. Charles Hospital (St. Charles)
Provider:	St. Francis Hospital & Heart Center (St. Francis HC)
Services:	<p><u>Quality Assurance/Performance Improvement (QA/PI)</u>, St. Francis HC representatives will review the quality of cardiac care provided by St. Charles, including statistical data, policy and procedures, care by medical, nursing, and others. St. Francis will participate in joint cardiology/cardiac interventional conferences at least quarterly to include a review of cardiac laboratory-related morbidity and mortality, uncomplicated routine cases, patient selection, and the number and duration of cardiac catheterization laboratory system failures.</p> <p><u>Staffing and Support</u>, St. Francis HC will ensure staffing coverage by a qualified interventional cardiologist immediately available for consultation (on-site within 30 minutes) who remains available after each PCI to handle emergencies. St. Francis HC will support St. Charles in compliance with EP Cardiac laboratory program regulations.</p> <p><u>Consultation and Cooperation</u>, St. Francis HC, will assist St. Charles in the following: development of privileging criteria and re-credentialing; development of patient selection criteria; consult concerning equipment, staffing, ancillary services, policies, and procedures; implement a pre-procedure risk stratification tool, development, and implementation of procedures to provide appropriate patient transfers between facilities; establish and maintain a telemedicine link between two facilities that provide the capability for off-site review of digital studies; cause right medical staff physicians to provide timely treatment consultation on cardiac cases.</p> <p><u>Studies and Training</u>, St. Francis HC and St. Charles will jointly sponsor and conduct annual studies of the impact of the St. Charles service on costs and access to cardiac services in the hospital's service area. St. Francis HC and St. Charles will develop a plan for how St. Charles will maintain the capacity to provide PCI services on a 24-hour-a-day, 365-days-a-year basis and be capable of assembling a dedicated team within 30 minutes of the activation call to provide coronary intervention.</p> <p><u>Transfers</u>, If, by the implemented risk stratification procedures, a cardiac patient needs to be transferred to another facility for services that cannot be provided at St. Charles, St. Charles will contact Good Samaritan Hospital (GSH) and St. Francis HC to coordinate with an accepting physician for the patient's prompt and continued care.</p>
Term	Five years and shall extend for an additional five years unless terminated. Upon written agreement of the parties, upon at least ninety (90) days 'written notice.
Fee	St. Francis Hospital will provide this service free as part of its commitment to all Catholic Health hospitals.

St. Charles Hospital has submitted an executed attestation stating that the applicant understands and acknowledges that there are statutory and regulatory requirements that cannot be delegated to a third party and that St. Charles Hospital will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Capability and Feasibility

Total project costs of \$6,818,571 will be funded with equity from Catholic Health. CH's Executive Vice President and Chief Financial Officer has submitted a letter supporting the operating and capital needs of the Hospital.

Total working capital is estimated at \$920,848 based on two months of third-year incremental expenses. Catholic Health will fund working capital from operations. A review of BFA Attachment A Catholic Health's 2022 Certified Financial Statements indicates sufficient resources to meet the project's equity requirements.

The submitted budget projects a net income of \$1,031,894 and \$1,209,365 in Year One and Year Three, respectively. The budget appears reasonable.

A review of BFA Attachment A, Catholic Health 2021-2022 certified financial statement shows \$1.321 billion in positive working capital, \$1.917 billion in positive net assets, and \$56.556 million in operating income. A review of BFA Attachment B, St. Charles Hospital's April 30, 2023, internal financial statement shows negative working capital, net assets deficit, and operating loss. St. Francis Heart Center at St. Charles Hospital catheterization lab benefits the community within the St. Charles PSA and will contribute to the Hospital's long-term financial sustainability. As an integrated healthcare delivery system, Catholic Health supports its member entities to provide mission-critical care to its patients. In addition to this support, Catholic Health is executing its strategic plan "Vision Forward," which includes margin-improving initiatives at each member entity, including St. Charles Hospital.

Conclusion

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

Attachments

BFHP	Map
BFA Attachment A	2021-2022 Certified Financial Statements- Catholic Health
BFA Attachment B	St. Charles Hospital, April 30, 2023 Internal Financial Statements



Project # 231261-C
Weill Cornell Imaging at New York Presbyterian

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Construction **Acknowledged:** June 14, 2023

Executive Summary

Description

Weill Cornell Imaging at New York-Presbyterian (WCINYP, the "Center"), an existing Article 28 Diagnostic & Treatment Center (D&TC) specializing in radiology and imaging services, requests approval to certify and construct a new radiology extension clinic at 186 Joralemon Street, Brooklyn (Kings County). The extension clinic will provide imaging services, including an MRI machine, CT Scanners, two (2) ultrasound machines, a mammography unit, and an X-ray unit.

WCINYP's main site, at 520 East 70th Street, New York (New York County), as well as its six (6) existing extension clinics, provide radiology and imaging services. The sites have been experiencing increased utilization and increased volume demand. Many current Brooklyn patients are traveling to Manhattan, causing transportation and appointment issues. The applicant states this project will improve wait times, add additional equipment consistent with patient needs, decrease the patient's need to travel from Brooklyn to Manhattan, as well as cover the (5) New York City boroughs as a secondary population.

Keith Hentel, M.D., will serve as the Medical Director and is a Board-Certified Radiologist who will supervise the operations of the extension clinic. The New York-Presbyterian Hospital will serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 10,355 visits in the first year and 14,534 in the third year, with Medicaid utilization at 7.88%. These projections include 2,845 MRI scans in Year One and 3,600 scans in Year Three.

Program Summary

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

Financial Summary

The total project cost of \$28,263,980 will be funded with \$27,950,460 in equity from WCINYP and \$313,520 for the cost of the two (2) ultrasound machines funded by an equipment lease.

	<u>Year One</u>	<u>Year Three</u>
Budget:	2025	2027
Revenues	\$8,619,670	\$12,311,643
Expenses	<u>7,776,573</u>	<u>10,075,685</u>
Net Income/(Loss)	\$843,097	\$2,235,958

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 31, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
5. Submission of all executed equipment leases, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **June 15, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2024**, and construction must be completed by **March 15, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area is Brooklyn Heights, with the secondary service area being Kings County. The population of Kings County is projected to increase to 2,844,643 by 2028 based on Cornell Program on Applied Demographic estimates. Demographics for the primary service area are noted below, including comparisons with the county and New York State:

Demographics	Primary Service Area	Kings County	New York State
Total Population-2021 Estimate	68,777	2,712,360	20,114,745
Hispanic or Latino (of any race)	11.82%	18.79%	19.20%
White (non-Hispanic)	56.88%	36.73%	54.70%
Black or African American (non-Hispanic)	12.34%	28.63%	13.90%
Asian(non-Hispanic)	13.75%	11.75%	8.60%
Other (non-Hispanic)	5.21%	4.10%	3.60%

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

In 2020, 93.3% of the population of Kings County had health coverage as follows:

Employee plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-group plans	11.8%
Military or VA plans	0.327%

Source: Data USA

The table below shows the projected payor mix for the proposed extension clinic. Medicaid utilization is projected at 7.9%. The applicant states the Medicaid projection is based on the current patient mix at other WCINYP locations.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial FFS	4.38%	4.40%
Commercial MC	56.67%	56.66%
Medicare FFS	22.94%	22.94%
Medicare MC	7.30%	7.30%
Medicaid FFS	0.52%	0.52%
Medicaid MC	7.36%	7.36%
Private Pay	0.78%	0.78%
Other	0.05%	0.05%

Weill Cornell Imaging at NY Presbyterian began operations in 2007 and operates six extension clinics serving the residents of New York County, providing a variety of imaging services. This proposed extension clinic will be the first extension clinic located in Kings County. Over the past few years, WCINYP sites have experienced a steady increase in the demand for services. The various centers had a combined total volume of 248,029 in 2019 and a total volume of 269,297 in 2022, an increase of 9 percent. The number of referrals from Kings County residents has increased significantly over the past few years. These patients have to travel to Weill Cornell Imaging sites in Manhattan for their imaging services. The proposed hours of operation at the new site will be Monday through Friday, 7:30 am to 5 pm. Operating hours will include evenings and weekends at a later date.

Projected Visits		
Type of Service	Year 1	Year 3
CT Scanner	1,822	2,732
MRI	2,845	3,600
Other Medical Services	5,688	8,202
Total	10,355	14,534

Conclusion

Approval of this project will allow for improved access to a clinic offering a variety of imaging services to the residents of Kings County.

Program Analysis

Project Proposal

Weill Cornell Imaging at New York Presbyterian (WCINYP), an existing Article 28 Diagnostic and Treatment Center located at 520 East 70th Street, Level J-0, in New York (New York County), seeks approval to certify and construct a new extension clinic at 186 Joralemon Street in Brooklyn (Kings County). The extension clinic will be certified for CT Scanner, Magnetic Resonance Imaging, and Medical Services-Other Medical Specialties. The extension clinic will provide CT Scanning, MRI imaging, Ultrasound, Mammography, and X-ray imaging services.

The Applicant reports that the creation of the new extension clinic will help meet the radiologic needs of the medical specialty offices of Weill Cornell Medicine and the non-Cornell affiliated physicians in Brooklyn. The extension clinic will also help alleviate capacity and operational challenges at the Center's existing sites. The Center's existing sites are experiencing heavy growth and utilization due to a growing volume of referrals. This clinic will also improve access to imaging services by decreasing the need for patients who reside in Brooklyn to travel to Manhattan to receive imaging services.

The Applicant reports that WCINYP experiences very high utilization across existing sites. Total volume across all existing sites increased from 199,943 in 2017 to 269,297 in 2022. The facilities did see a decrease in 2020 from the COVID-19 pandemic but rebounded with a 13.4% increase in patient visits from 2021 to 2022. One of the most important factors is that elderly patients are heavy users of radiologic imaging procedures. The elderly population is expected to increase by 21.3%. Also, the total referrals WCINYP has received for patients residing in Brooklyn has increased 248% from 2020. This has strained capacity at the Manhattan sites as these patients currently travel to these sites to receive their imaging, which has created a demand for longer hours and weekend hours. There are currently no Article 28 facilities in Brooklyn that specialize in radiology and imaging.

Staffing is expected to grow by 30.50 FTEs in Year One and 7.50 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.

The Department issued a Stipulation and Order dated October 3, 2023, and fined New York Presbyterian Queens \$10,000 based on findings from a survey that was completed on April 6, 2023. Deficient practice was cited in the area of Sexual Assault and Patient Rights. Specifically, the facility failed to investigate an allegation of sexual assault and implement corrective actions.

The Department issued a Stipulation and Order dated November 6, 2017, and fined New York Presbyterian Queens \$2,000 based on findings from an allegation survey that was completed on May 16, 2016. Deficient practice was cited in the area of Patient Rights.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project costs for renovation and movable equipment, are estimated at \$28,263,980, and detailed as follows.

Renovation & Demolition	\$15,091,853
Temporary Utilities	110,000
Design Contingency	1,509,105
Construction Contingency	2,043,413
Architect/Engineering Fees	950,000
Construction Manager Fees	379,769
Other Fees	1,394,026
Movable Equipment	6,118,643
Telecommunications	510,500
Application Fee	2,000
Additional Processing Fee	<u>154,591</u>
Total Project Cost	\$28,263,980

The applicant's financing plan appears as follows:

Equity	\$27,950,460
Equipment Leases (interest TBD, term TBD) *	<u>\$313,520</u>
Total Project Costs:	\$28,263,980

* The operator has two (2) quotes from GE Healthcare and Siemen's Medical Solutions USA, Inc. Both are drafts and are being evaluated by the applicant.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for Years One and Three, summarized below:

	Year One		Year Three	
	<u>2025</u>		<u>2027</u>	
<u>Outpatient Rev.</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$1,138.71	\$516,973	\$1,155.56	\$738,403
Commercial MC	\$1,136.31	6,667,860	\$1,156.51	9,523,834
Medicare FFS	\$299.81	712,057	\$305.05	1,017,045
Medicare MC	\$512.35	387,334	\$521.43	553,236
Medicaid FFS	\$39.69	2,143	\$40.82	3,062
Medicaid MC	\$361.83	275,713	\$368.04	393,806
Private Pay	\$649.18	52,583	\$664.65	75,106
Other *	\$1,001.31	5,007	\$1,021.56	7,151
Total Revenues		<u>\$8,619,670</u>		<u>\$12,311,643</u>
Expenses				
Operating	\$545.04	\$5,643,910	\$546.51	\$7,943,022
Capital	205.95	2,132,663	146.74	2,132,665
Total Expense	\$751.00	<u>\$7,776,573</u>	\$693.25	<u>\$10,075,685</u>
Net Income		<u>\$843,097</u>		<u>\$2,235,958</u>
Visits		10,355		14,534
Cost per Visit		\$751.00		\$693.25

* Other is related to the sliding scale and discount policy currently in place.

The following is noted with respect to the submitted budget:

- Revenues and projections are in keeping with the current utilization and volume trends experienced at WCINYP's existing sites.

- The payer mix and revenue by payer are also based on the actual experience of the Center at its other existing sites.
- The staffing plans and projected operating expenses are based on the actual experience of the Center in providing the proposed imaging service at its existing clinic sites.
- WCINYP states it does have a free or reduced-price policy for people who are unable to pay based on their financial situation, which also includes outpatient services.

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

Payor	<u>Years One</u>	<u>Year Three</u>
	<u>2025</u>	<u>2027</u>
<u>Outpatient:</u>		
Commercial FFS	4.38%	4.40%
Commercial MC	56.67%	56.66%
Medicare FFS	22.94%	22.94%
Medicare MC	7.30%	7.30%
Medicaid FFS	.52%	.52%
Medicaid MC	7.36%	7.36%
Private Pay	.78%	.78%
Other	<u>.05%</u>	<u>.05%</u>
Total	100%	100%

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

Date:	TBD
Premises:	9,148 sq. ft. located at 186 Joralmon Street, Brooklyn (Kings County)
Landlord:	Joralemon Associates, LLC
Tenant:	Weill Cornell Imaging at York-Presbyterian
Term:	20 Year Lease.
Rent:	<p>First Floor (Per Month)</p> <p>Year 1-5 is \$45,360.33 per month</p> <p>Year 6-10 is \$47,908.67 per month</p> <p>Year 11-15 is \$50,457.00 per month</p> <p>Year 16-20 is \$53,515.00 per month</p> <p>Lower Level (Per Month MRI Room - Basement)</p> <p>Year 1 is \$14,595.00 Year 11 is \$19,143.55</p> <p>Year 2 is \$14,996.00 Year 12 is \$19,669.99</p> <p>Year 3 is \$15,408.76 Year 13 is \$20,210.92</p> <p>Year 4 is \$15,832.50 Year 14 is \$20,766.72</p> <p>Year 5 is \$16,267.90 Year 15 is \$21,337.80</p> <p>Year 6 is \$16,715.26 Year 16 is \$21,924.59</p> <p>Year 7 is \$17,174.93 Year 17 is \$22,527.52</p> <p>Year 8 is \$17,647.24 Year 18 is \$23,147.03</p> <p>Year 9 is \$18,132.54 Year 19 is \$23,783.57</p> <p>Year 10 is \$18,361.19 Year 20 is \$24,437.62</p>
Provisions:	Tenant may not sublet unless authorized by landlord. Landlord understands the MRI will be used on-site. Taxes or escalations will be proportioned and charged to the tenant from there if increased from the base year. Landlord shall provide cleaning services and water. Utilities will be provided at landlord's rate plus a 4% service charge for overhead and expenses in connection with submetering.

The applicant has stated that there is no relationship between the tenant or landlord. Also, the applicant has submitted two letters of rent reasonableness.

Capability and Feasibility

The total project cost of \$28,263,980 will be funded with \$27,950,460 in equity from WCINYP and \$313,520 with an equipment lease for the cost of two ultrasound machines. A draft equipment lease has been submitted; however, the interest rate and term have not yet been established. The working capital requirements are estimated at \$1,679,281, based on two months of third-year expenses, and will be funded with equity from WCINYP. The submitted budget projects a net income of \$843,097 and \$2,235,958 during years one and three of operations. The budget appears reasonable.

BFA Attachment A presents the 2021-2022 Certified Financial Statements showing the entity maintained an average positive working capital and net asset position for both years and an operating income of \$56,046,000 and \$69,750,000 in 2021 and 2022, respectively.

BFA Attachment B presents the June 30, 2023, Internal Financial Statements. The entity maintained a positive working capital and net asset position and a net operating income of \$39,069,818.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2021-2022 Certified Financial Statements
BFA Attachment B	June 30, 2023 Internal Financial Statements



Project # 232124-C
Community Health Center of Richmond, Inc.

Program: Diagnostic and Treatment Center **County:** Richmond
Purpose: Construction **Acknowledged:** October 16, 2023

Executive Summary

Description

Community Health Center of Richmond (CHCR, the "Center"), a Federally Qualified Health Center (FQHC), is submitting an amendment to approved Certificate of Need (CON) Project No. 201165- C, which proposed to certify a new extension clinic at 104 New Dorp Plaza, Staten Island (Richmond County). The amendment is being submitted due to an increase in total project cost over \$15,000,000 which requires a Full Review CON.

CHCR currently operates two (2) extension clinics, serving the North Shore of Staten Island. Services provided at the new extension clinic will include the full range of primary and preventive health care, including cancer screening, well-child checks, immunizations, family planning services, prenatal care, and all appropriate primary care screening (e.g., cholesterol, glucose testing, blood lead, STIs, etc.). The extension clinic will also provide pediatric services, OB/GYN, nutritional and medical social services, as well as dental services and dental X-ray services.

Rosalinda Rosario-Lipka, D.O., will serve as the Medical Director of CHCR. The Center has existing backup and transfer agreements for emergencies with Staten Island University Hospital, approximately 12 minutes away, and Richmond University Medical Center, 11 minutes away.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 16,656 visits in Year One and 26,571 in Year Three, with Medicaid at 67.4% and Charity Care at 12.44% by Year Three.

Program Summary

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

Financial Summary

Total project cost of \$20,901,236 will be met with equity of \$3,100,000 for previously purchased land, a \$1,000,000 HRSA grant, a \$2,000,000 Statewide Health Facility Health Transformation III grant, a \$9,500,000 loan from Local Initiatives Support Corporation, \$4,003,650 through the New Markets Tax Credit Program, and \$1,297,586 in accumulated funds.

	<u>Year One</u> <u>2026</u>	<u>Year Three</u> <u>2028</u>
Budget:		
Revenues	\$3,469,449	\$5,660,340
Expenses	<u>\$3,885,695</u>	<u>\$5,391,432</u>
Net Income (Loss)	(\$416,246)	\$268,908

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of documentation confirming final approval of the executed New Markets Tax Credit contract, acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming final approval of the Statewide Health Care Facility Transformation Program III grant, acceptable to the Department. [BFA]
6. Submission of an executed loan agreement from the Local Initiatives Support Corporation, acceptable to the Department. [BFA]

Approval conditional upon:

1. This project must be completed by **January 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2024**, and construction must be completed by **October 1, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

Established in 2006, the Community Health Center of Richmond is a not-for-profit healthcare organization. Community Health Center of Richmond currently has a main site and two extension clinics. The applicant proposes offering the following services: Dental O/P, Medical Services – Other Medical Specialties, and Medical Services – Primary Care.

The primary service area is Staten Island in Richmond County, with a focus on patients in zip code 10306 the applicant will still treat all residents of Richmond County in need. The county's overall population is estimated to decrease to 487,631 or 0.7% while its 65+ population is expected to increase to 106,871 or 25.1% by 2028 per projection data from the Cornell Program on Applied Demographics. Demographics for the primary service area are noted below, including a comparison with the county and New York State.

Demographics	Zip Code 10306	Richmond County	New York State
Total Population	55,805	491,133	20,114,745
Hispanic or Latino (of any race)	16.00%	18.80%	19.20%
White (non-Hispanic)	66.9%	55.70%	54.70%
Black or African American (non-Hispanic)	3.6%	9.00%	13.90%
Asian (non-Hispanic)	10.2%	13.00%	8.60%
Other (non-Hispanic)	3.30%	3.50%	3.60%

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

In 2021 95.9% of the population in Richmond County has health coverage as follows.

Employer Plans	55.40%
Medicaid	17.90%
Medicare	12.40%
Non-Group Plans	9.85%
Military or VA	0.31%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	9.57%	9.60%
Medicare	1.37%	1.36%
Medicaid	67.40%	67.40%
Private Pay	9.20%	9.19%
Charity Care	12.45%	12.44%
Total Visits	16,656	26,571

Prevention Quality Indicators (PQI) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults for Overall PQIs			
PQI Rates: 2020	Zip code 10306	Richmond County	New York State
All PQI's	1,055	931	994

The overall PQI rates for zip code 10306 exceed that of Richmond County and the State average. It is the goal of the applicant to reduce avoidable hospitalizations by providing primary care services.

Hours of operation will be Monday - Friday, 8:00 AM – 4:30 PM. The extension clinic will increase access for residents of Staten Island with a focus on zip code 10306 providing a full range of primary care and dental services. Services will include cancer screening, well-child checks, immunizations, family planning, prenatal care, pediatric services, OB/GYN, nutritional and medical social services, and other screening procedures.

Currently, the only existing Article 28 facility in zip code 10306 is a school-based health center located at New Dorp High School operated by Staten Island University Hospital. The new extension clinic is expected to be more accessible for residents who have difficulty accessing the Center's existing site on the North Shore of Staten Island.

Conclusion

The applicant plans to provide dental services, primary care, and other medical specialty services to a new service area on Staten Island.

Program Analysis

Project Proposal

Community Health Center of Richmond (CHCR, the “Center”), a Federally Qualified Health Center (FQHC), is submitting an amendment to the approved Certificate of Need (C.O.N.) Project No. 201165-C, which proposed to certify a new extension clinic located at 104 New Dorp Plaza, Staten Island (Richmond County), New York 10306. This C.O.N. amendment is being submitted due to an increase in the Total Project Cost above \$15 million, meaning the project must now be submitted as a Full Review C.O.N. Application, instead of an Administrative Review.

This submission represents an approved HRSA Federal grant project, as well as an approved Statewide Health Care Facility Transformation Program project.

Project Number	232124
Facility Name	Community Health Center of Richmond, Inc
Description	Certify a new extension clinic to be located at 104 New Dorp Plaza, Staten Island - HRSA Funded Safety Net (Amends and Supersedes CON 201165)

Site	PFI	
Community Health Center of Richmond, Inc 233 Doughty Boulevard Inwood, NY 11096	New	Certify the extension clinic to provide: Medical Services - Primary Care Medical Services - Other Medical Specialties Dental O/P

Staffing Categories	Year 1	Year 3
Management and Supervision	0.65	1
Licensed Practical Nurses	1.3	2.0
Physicians	2.75	4.0
Nurse Practitioners	0.5	1.0
Social Workers and Psychologists	0.65	1.0
Clerical and Other Administrative	5.85	9.0
Other – Dentist and Dental Hygienist	1.95	3.0
Other – Nutritionist	0.65	1.0
Other – Direct Medical Support	7.8	12.0
Total	22.1	34

Staffing is based on expected utilization and the experience of the applicant at its existing clinic sites.

The proposed new extension clinic will increase access to high-quality, patient-centered primary care for Staten Island residents, particularly for the residents of ZIP Code 10306. Currently, the only existing Article 28 site in ZC 10306 is a school-based health center at New Dorp High School operated by Staten Island University Hospital. The proposed new extension clinic will be geographically more accessible for residents of the ZIP Code who have trouble accessing the Center’s existing site on the North Shore of Staten Island.

Services provided at the new extension clinic will include the full range of primary and preventive health care, including cancer screening, well-child checks, immunizations, family planning services, prenatal care, and all appropriate primary care screening (e.g., cholesterol, glucose testing, blood lead, STIs, etc.). The extension clinic will also provide pediatric services, OB/GYN, nutritional and medical social services, as well as dental services and dental X-ray services.

The hours of operation of the extension clinic will be 8:00 A.M. to 4:30 P.M, Monday to Friday.

Rosalinda Rosario-Lipka, DO is the proposed Medical Director. Dr. Rosario-Lipka is a Doctor of Osteopathic Medicine and has been the Chief Medical Officer of the Community Health Center of Richmond, Inc., Staten Island, NY from 12/2010 – Present. She was an Attending Physician in Family Medicine at The Brooklyn Hospital Center, Brooklyn, NY from 8/2002 – 12/2010 and Medical Director at, Continuity Care Clinic of The Brooklyn Hospital Center from 2/2006 – 12/2010. She earned her Medical Degree from the New York College of Osteopathic Medicine in 1999. She was licensed to practice medicine and surgery in the State of New York in 2001 and American Board of Family Practice Board Certified in 2004.

CHCR will maintain its current transfer and affiliation agreement from 2011 with Staten Island University Hospital and Richmond University Medical Center.

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 construction and movable equipment is estimated at \$20,901,236 and is distributed as follows:

Land	\$3,100,000
New Construction	11,791,675
Site Development	488,871
Design Contingency	1,179,168
Construction Contingency	589,583
Architect/Engineering Fees	943,334
Other Fees	51,000
Movable Equipment	405,184
Telecommunications	76,500
Financing Costs	1,615,000
Interim Interest Expense	566,042
Application Fee	1,250
Additional Processing Fee	<u>93,629</u>
Total Project Cost	\$20,901,236

Financing for this project is as follows:

Land Purchase (contract/appraisal submitted)	\$3,100,000
Federal Health Resources and Services award	\$1,000,000
Statewide Health Facility Transformation Program	\$2,000,000
Loan from (LISC) Local Initiatives	\$9,500,000
New Market Tax Program (Approximate net value)	\$4,003,650
Equity from the Center – See Attachment (A and B)	<u>\$1,297,586</u>
Total Project Cost	\$20,901,236

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>2026</u>		<u>2028</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$84.97	\$135,450	\$85.02	\$1,222,385
Medicare FFS	\$137.21	31,420	\$140.78	590,528
Medicaid FFS	\$238.82	178,159	\$245.90	2,203,779
Medicaid MC	\$238.92	2,503,870	\$245.84	1,054,899
Private Pay	\$62.98	96,550	\$63.00	153,960
*Other Rev.	-	524,000	-	835,730
Total Revenue		<u>\$3,469,449</u>		<u>\$5,660,340</u>
Expenses:				
Operating	\$156.92	\$2,613,731	\$155.59	\$4,134,291
** Capital	<u>76.37</u>	<u>1,271,964</u>	<u>47.31</u>	<u>1,257,141</u>
Total Expenses	\$233.29	\$3,885,695	\$202.91	\$5,391,432
Net Income/(Loss)		<u>(\$416,246)</u>		<u>\$268,908</u>
Total Visits		16,656		26,571
Cost per Visit		\$233.29		\$202.91

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

Payor:	Year One	Year Three
	2026	2028
Commercial FFS	9.57%	9.60%
Medicare FFS	1.37%	1.36%
Medicaid FFS	4.48%	4.49%
Medicaid M/C	62.92%	62.91%
Private Pay	9.20%	9.19%
Charity Care	12.45%	12.44%
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Reimbursement rate assumptions are based on the experience of the applicant operating other centers near the existing Federally Qualified Health Center.
- Staffing is based on the expected utilization and the experience of the applicant as a federally funded health center currently operating other existing sites.
- Expenses are based predominantly on the depreciation cost due to construction, and labor costs for the staffing model that includes 22.10 FTEs in Year One and 34 FTEs in Year Three, including 2.75 Physicians in Year One and 4 physicians in Year Three.
- The applicant indicated they are committed to providing high-quality and efficient health care services to underserved and uninsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The center maintains a sliding fee scale and policies and procedures for serving the uninsured and persons without the ability to pay.

Land Purchase

The applicant submitted an executed contract of sale agreement and appraisal of the property from a New York State real estate valuation and advisory company using the lower of cost or market methodology. The property was paid for according to a contractual agreement at closing.

Date:	April 6, 2016
Seller:	XMART, LLC
Buyer:	Community Health Center of Richmond, Inc.
Purchase Price:	\$3,100,000 or \$121.54 Per Square Foot noted on the MAI evaluation.
Appraisal of Property:	Cushman & Wakefield, Inc. Valuation & Advisory Services (Value \$3,100,000) Certified MAI has been submitted for this commercial property.

As of February 19, 2018, the appraisal report was executed for the Local Initiative Support Corporation which is certified by the Members Appraisal Institute. An affidavit from the CEO of Community Health Center of Richmond was submitted stating there is no relationship between the purchaser and seller.

Capability and Feasibility

Total project cost of \$20,901,236 will be met with equity of \$3,100,000 for previously purchased land, a \$1,000,000 HRSA grant, a \$2,000,000 Statewide Health Facility Health Transformation III grant, a \$9,500,000 loan from Local Initiatives Support Corporation, \$4,003,650 through the New Markets Tax Credit Program, and \$1,297,586 in accumulated funds.

Working capital requirements, estimated at \$898,572 based on two months of third-year expenses, will be funded through ongoing operations. BFA Attachment B shows the entity has sufficient funds to cover the working capital requirement.

BFA Attachment A presents the Community Health Center of Richmond Inc.'s 2021-2022 Certified Financial Statements. The Center maintained a positive working capital and net asset position in both years and reported an operating income of \$3,680,668 and \$1,484,361, in 2021 and 2022, respectively. BFA Attachment B shows Community Health Center of Richmond Inc.'s Internal Financial Statements for the year ended June 30, 2023, in which Community Health Center of Richmond Inc. reported positive

working capital and positive net asset position and generated an operating income of \$368,717 before depreciation.

The submitted budget projects a net loss of (\$416,246) and a net income of \$268,908 during the first and third years of operations, respectively. The first-year loss is due to start-up costs and Community Health Center of Richmond Inc. has submitted a deficit funding letter to cover the anticipated loss through operations.

Conclusion

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

<h2>Attachments</h2>

BHFP Attachment	Map
BFA Attachment A	Community Health Center of Richmond Inc. – December 2021 & 2022 Certified Financial Statements
BFA Attachment B	Community Health Center of Richmond Inc. – June 30, 2023, Internal Financial Statement



Project # 222044-B
Sorin Ambulatory, LLC d/b/a Sorin Ambulatory Surgery Center

Program: Diagnostic and Treatment Center County: New York
Purpose: Establishment and Construction Acknowledged: September 19, 2022

Executive Summary

Description

Sorin Ambulatory, LLC d/b/a Sorin Ambulatory Surgery Center (Sorin or The Center) an existing New York State limited liability company, requests approval to establish and construct a multi-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in orthopedic, vascular, and endovascular surgery. The Center, at 120 Wall Street in New York (New York County), will be open six days a week and New York County will be its primary service area.

The proposed center will be housed in leased space on the ground floor and on the lower level of an existing thirty-four-story commercial-use building. The FASC will include two procedure rooms (one of which will have a fixed C-Arm imaging unit) and one room for CT scans. The space is currently used by Sorin Medical, P.C. for their existing private practice. This practice will close once this facility opens.

The proposed sole member of Sorin is Joseph Puma, D.O. Justin A. Ratcliffe, M.D., MBA, FACC, FSCAI, who is Board-Certified in internal and endovascular medicine and interventional cardiology and cardiovascular disease, will serve as Medical Director.

Sorin will enter into a Transfer and Affiliation Agreement with NYU Langone Health, 4.8 miles away with a 21-minute travel time, for backup and emergency care services.

OPCHSM Recommendation

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

Need Summary

The applicant projects 8,640 procedures in Year One and 9,167 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

There are no project costs associated with this project as the space currently meets Article 28 requirements, and no buildout is required.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$30,590,723), Expenses (\$30,253,774), Net Income (\$336,949).

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 August 3, 2022.

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed employee lease agreement, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or updating 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]
4. 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
February 8, 2024

Need Analysis

Background and Analysis

The service area consists of New York County. The population of New York County is projected to increase to 1,720,649 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	New York County	New York State
Total Population-2021 Estimate	1,669,127	20,114,745
Hispanic or Latino (of any race)	25.6%	19.2%
White (non-Hispanic)	46.7%	54.7%
Black or African American (non-Hispanic)	12.1%	13.9%
Asian (non-Hispanic)	11.8%	8.6%
Other (non-Hispanic)	3.7%	3.6%

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

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%

Source: Data USA

Based on the current practices of participating surgeons, the applicant projects 8,640 procedures in Year One and 9,167 in Year Three with Medicaid at 10% and Charity Care at 2%. The applicant has identified twelve physicians interested in performing procedures at the proposed center. The applicant states that all of the procedures moving to this center are currently being performed in an office-based setting. The center's operating hours will be Monday through Saturday from 7 am until 11 pm. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	2,160	25%	2,292	25%
Commercial MC	1,642	19%	1,742	19%
Medicare FFS	432	5%	458	5%
Medicare MC	3,110	36%	3,300	36%
Medicaid MC	864	10%	917	10%
Private Pay	259	3%	275	3%
Charity Care	173	2%	183	2%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Health First, United Community Plan, AmidaCare, and Empire Health Plus. The center will work collaboratively with local Health Centers such as AllHealth D&TC, Bronx Health Center, and NY Preventive 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.

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	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
Orthopedics	HSS ASC of Manhattan	2,646	3,217	3,295
Orthopedics	HSS West Side ASC	1,593	1,849	1,979
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
Endovascular	NY Endovascular Center (opened 8/16/22)	N/A	N/A	0
Multi	NY Center for Ambulatory Surgery	480	934	1,037
Multi	Surgicare of Manhattan, LLC	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	642
Total Visits		21,122	25,056	31,381

Conclusion

Approval of this project will bring office-based outpatient orthopedic, vascular, and endovascular surgery services into an Article 28 setting.

Program Analysis

Project Proposal

Proposed Operator	Sorin Ambulatory, LLC
Doing Business As	Sorin Ambulatory Surgery Center
Site Address	120 Wall Street New York, New York 10005 (New York County)
Surgical Specialties	Multispecialty ASC Orthopedic Surgery Vascular Surgery Endovascular Surgery
Operating Rooms	0
Procedure Rooms	2
Hours of Operation	Monday – Saturday 7 am – 11 pm
Staffing (1st Year / 3rd Year)	16.75 FTEs / 16.75 FTEs
Medical Director(s)	Justin Ratcliffe, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	NYU Langone Health, located 4.8 miles away with a 21-minute travel time
On-call service	Patients who require assistance during off-hours will be provided a phone number for a 24-hour/day, seven (7) days/week on-call service to immediately refer the patient to the Center's on-call physician.

Character and Competence

The ownership of Sorin ASC, LLC is:

Member Name	Proposed Interest
Joseph Puma, D.O	100.00%
TOTAL	100%

Dr. Joseph Puma is the Founder and President of Sorin Medical P.C. for over nine (9) years. He is the Assistant Clinical Professor of Medicine of Cardiology for Columbia for nine (9) years. He was the Director of the Division of Cardiology at Twin County Regional Hospital for 13 years. He was an Associate Consultant in Medicine in the Cardiology Department for 12 years. He was the President of the Clinical Research Division of Medcath, Inc. for six (6) months. He was the Medical Director and President at Advanced Health Institute for over four (4) years. He was the Senior Vice President and Director of Clinical Research for over one (1) year. He was the Medical Director and Managing Partner for over five (5) years. He was the Chief of the Cardiac Catheterization Lab, Director of the Cardiovascular Outreach Program, and Director of Cardiovascular Clinical Research at New York Methodist Hospital for over two (2) years. He was an Attending Physician in Research at Lenox Hill Interventional Cardiac and Vascular Services, PC for over two (2) years. He was an Associate Director of the Interventional Cardiology Training Program at Lenox Hill Interventional Cardiac and Vascular Services, PC for over three (3) years. He was the Director of Cardiology Inpatient Services at Mount Sinai St. Luke's Hospital for six (6) months. He was the Chief of Clinical Cardiology and Vice President of Strategy Outpatient Cardiovascular Services at Mount Sinai St. Luke's Hospital for one (1) year. He received his medical degree from New York College of Osteopathic Medicine. He completed his Internal Medicine residency and Cardiology fellowship at Long Island College Hospital. He is board-certified in Internal Medicine, Cardiovascular Disease, and Interventional Cardiology.

Dr. Justin Ratcliffe is the Associate Program Director of the Interventional Cardiology Fellowship Program at Mount Sinai Morningside for five (5) years. He has been the Medical Director of Sorin Medical P.C. for seven (7) years. He is the Assistant Clinical Professor of Medicine at New York Presbyterian-Columbia University for six (6) years. He received his medical degree from Albert Einstein College of Medicine. He completed his Internal Medicine Residency at Beth Israel Medical Center. He completed his Cardiovascular Disease fellowship at Beth Israel Medical Center and his Interventional Cardiology

fellowship at Mount Sinai. He is board-certified in Internal Medicine, Endovascular Medicine, Interventional Cardiology, and Cardiovascular Disease.

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 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.

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with patients to educate them regarding the availability of primary care services in the area offered by local providers, including the array of services offered by Mount Sinai Beth Israel as well as other D&TCs which the Center has a relationship with, including AllHealth D&TC, Bronx Health Center, and New York Preventative Health Center. Prior to leaving, each patient will be provided with information regarding the availability of local primary care services. The members of the Center are committed to serving all patients without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics. The operating budget projects include 10% Medicaid and that 2% of procedures will be for charity care, reduced compensation, or uncompensated care. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The purpose of this program is to inform these groups of the benefits derived from the outpatient surgical treatments at the Center. The Applicant will utilize his working relationship with AllHealth D&TC, Bronx Health Center, and New York Preventative Health Center. The Applicant will reach out to these organizations to promote enhanced access to surgical services offered by the Center.

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. The Applicant does not expect to consider joining any Accountable Care Organization (ACO) or Medical Homes.

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 submitted an operating budget, in 2024 dollars, for Year One and Year Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial - FFS	\$5,619	\$12,136,251	\$5,619	\$12,875,101
Commercial - MC	\$4,767	\$7,826,043	\$4,767	\$8,302,490
Medicare - FFS	\$3,405	\$1,471,061	\$3,405	\$1,560,618
Medicare - MC	\$2,894	\$9,002,892	\$2,894	\$9,550,984
Medicaid - MC	\$984	\$850,592	\$984	\$902,375
Private Pay	\$341	\$88,264	\$341	\$93,637
Bad Debt		<u>(784,378)</u>		<u>(832,130)</u>
Total Revenue		\$30,590,723		\$32,453,076
Expenses:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Operating	\$3,452	\$29,825,514	\$3,405	\$31,208,814
Capital	\$50	\$428,260	\$51	\$469,391
Total	\$3,502	\$30,253,774	\$3,456	\$31,678,205
Net Income (Loss):		\$336,949		\$774,871
Total Procedures:		8,640		9,167

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

<u>Payor</u>	<u>Years One and Three</u>
Commercial – FFS	25%
Commercial – MC	19%
Medicare – FFS	5%
Medicare – MC	36%
Medicaid – MC	10%
Private Pay	3%
Charity	<u>2%</u>
Total	100%

The following is noted with respect to the submitted budget:

- Rates are based on the 2022 Medicare and Medicaid rate schedule for the services to be provided. Commercial Fee-for-Service is approximately 1.65 times the Medicare fee schedule, Commercial Managed Care is 1.4 times the Medicare fee schedule.
- Expenses are based on historical data from previous cost reports of similar ambulatory surgery centers.
- The numbers and mix of staffing were determined by the historical experience of the physicians and the proposed operator.
- The applicant identified 12 physicians interested in performing procedures at the proposed Center. Utilization is based upon physicians submitting letters of intent to perform the estimated number of procedures at the FASC.
- The applicant states this proposal will not result in the migration of procedures to the proposed Center from local hospitals. All procedures projected for the Center are currently being performed in the office-based surgical setting of the participating physicians.

The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The FASC will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

Lease Agreement

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

Premises:	A portion of the ground floor (5,686 sqft) and lower level (1,847 sqft) at 120 Wall Street, New York City, NY
Landlord:	120 Wall Street Property Owner, LLC
Tenant:	Sorin Medical, P.C.
Term:	15 years
Rental:	\$392,334 base rent for the 1 st year, \$420,764 for the 2 nd year, with 2.5% per annum increases for years 3-15.
Provisions:	Tenant is responsible for utilities and any tenant work

Sublease Agreement

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

Premises:	A portion of the ground floor (5,686 sqft.) and lower level (1,847 sqft.) at 120 Wall Street, New York City, NY
Sublandlord:	Sorin Medical, P.C.
Subtenant:	Sorin Ambulatory, LLC
Term:	15 years
Rental:	\$392,334 rent for year 1, \$420,764 for year 2, with 2.5% per annum increases in years 3-15
Provisions:	Tenant is responsible for utilities and any tenant work

The applicant submitted an affidavit stating that there is no relationship between the landlord and tenant or subtenant. The tenant and the subtenant are related due to common ownership. The lease is an arm's length agreement, while the subspace lease is non-arm's length. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per-square-foot rental.

Employee Leasing Agreement

The applicant submitted a draft employee leasing agreement. The terms are summarized below:

Facility/Operator:	Sorin Ambulatory, LLC
Manager/Contractor:	Sorin Management, LLC
Term:	1 year with infinite 1-year renewals
Duties	Perform support services for Sorin Ambulatory including such functions and services as Sorin Ambulatory shall reasonably request, consistent with the reasonable expectations of persons serving in similar positions
Compensation:	\$2,003,040 Annually

While Sorin Management, LLC will be providing all the above services, Sorin Ambulatory, LLC retains ultimate control in all the final decisions associated with the services. The applicant 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. It is also noted that the proposed ASA is not an arm's length agreement as there is a relationship between the facility operator and the contractor.

Capability and Feasibility

There are no project costs associated with this project as the space currently meets Article 28 requirements. Working capital requirements are estimated at \$5,288,685 based on two months of third-year expenses and will be funded with members' equity. BFA Attachment A presents the proposed members' net worth statement, indicating sufficient resources to fund the requirement.

The submitted budget projects a net income of \$336,949 and \$774,871 during Year One and Year Three of operations, respectively. Revenue assumptions are based on physicians' letters of intent to perform procedures, and the rates are projected based on CMS-published rates for FASCs. Expenses are based on historical data from previous cost reports of similar ambulatory surgery centers. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Member
BFA Attachment B	Pro-Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty ambulatory surgery center at 120 Wall Street, 1st Floor, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

222044 B

FACILITY/APPLICANT:

Sorin Ambulatory, LLC d/b/a Sorin
Ambulatory Surgery Center

APPROVAL CONTINGENT UPON:

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed employee lease agreement, acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or updating 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]
4. 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 231114-B
Prime MD Center, LLC**

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment and Construction **Acknowledged:** April 4, 2023

Executive Summary

Description

Prime MD Center, LLC (Prime), a New York State limited liability company, is seeking approval to establish and construct a Diagnostic & Treatment Center (D&TC) at 1000 Railroad Avenue, Woodmere (Nassau County), currently operating as a private practice (Upstate Urgent Care, PLLC). Prime intends to operate as an urgent care center being certified for Medical Services – Primary Care and Medical Services – Other Medical Specialties including radiology x-ray services.

Prime MD Center, LLC's sole member is Mr. Benjamin Nadler. Sekuleo Gathers, M.D., will serve as the Medical Director.

Northwell Health – Long Island Jewish Valley Stream, approximately 4.9 miles away, has expressed interest as a backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 20,000 visits in Year One and 27,601 in Year Three. Medicaid utilization is projected at 11% with Charity Care at 2% in Years One and 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

There are no project costs associated with this application. The purchase price to acquire the operations and fixed assets is \$2,000,000. The applicant provided a draft promissory note between the buyer and seller for the purchase.

	<u>Year One</u> <u>2024</u>	<u>Year Three</u> <u>2026</u>
Budget:		
Revenues	\$2,269,443	\$3,132,137
Expenses	<u>2,047,291</u>	<u>2,464,602</u>
Net Income/(Loss)	\$222,152	\$667,535

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 March 31, 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 an executed Billing & Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Asset Purchase Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Amended Lease Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment and Assumption of Lease Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process of enrolling 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]
4. 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]
5. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
6. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2012 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients, and other building occupants, essential resident/patient support services, and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on-site for review by Department staff upon request. [AER]
7. This approval in no way obviates the applicant of the responsibility of complying with all applicable codes, rules, and regulations. Should violations be noted upon review of documents or found at the time of on-site inspections, or surveys, such violations shall be corrected prior to occupancy without additional costs allowed for reimbursement beyond the total project cost listed above. [AER]

Council Action Date
February 8, 2024

Need Analysis

Background and Analysis

The primary service area comprises Woodmere, Valley Stream, and Lawrence (zip codes: 11598, 11557, 11581, 11516, and 11559) which occupy the southwestern portion of Nassau County.

The population of Nassau County is projected to slightly increase to 1,424,878 by 2028 based on Cornell Program on Applied Demographic estimates. Demographics for the primary service area are noted below including comparisons with the county and New York State:

Demographics	Totals for Primary Service Area	Nassau County	New York State
Total Population	61,882	1,391,678	20,114,745
Hispanic or Latino (of any race)	12.4%	17.2%	19.2%
White (non-Hispanic)	67.8%	58.3%	54.7%
Black or African American (non-Hispanic)	8.5%	11.0%	13.9%
Asian(non-Hispanic)	7.3%	10.5%	8.6%
Other (non-Hispanic)	3.9%	3.1%	3.6%

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

According to Data USA, in 2020 95.9% of the population in Nassau County had health coverage as follows.

Employer Plans	59.5%
Medicaid	10.1%
Medicare	13.5%
Non-Group Plans	12.6%
Military or VA	0.238%

The following services will be provided: urgent care including x-ray services. Hours of operation will be Sunday-Thursday, 8 AM to 10 PM; Friday, 8 AM to 6 PM and Saturday from 5 PM to 10 PM. Through this project, the center will convert an existing private practice into an Article 28 Diagnostic and Treatment Center. The center will provide outpatient urgent care services for patients with acute illness or minor traumas that are not life-threatening or permanently disabling and do not require hospital-level care in an Emergency Department.

The projected visits are 20,000 in Year One and 27,601 in Year Three. The table below shows the projected payor mix for the first and third years.

Projected Payor Mix		
Insurance Type	Year One	Year Three
Commercial FFS	10%	10%
Commercial MC	45%	45%
Medicare FFS	25%	25%
Medicare MC	5%	5%
Medicaid MC	11%	11%
Private Pay	2%	2%
Charity Care	2%	2%

Conclusion

The new proposed D&TC will provide improved access to urgent care services to the residents of Woodmere, Valley Stream, Lawrence, and the surrounding communities in Nassau County.

Program Analysis

Project Proposal

Proposed Operator	Prime MD Center, LLC.
To Be Known As	Prime MD Center
Site Address	1000 Railroad Avenue Woodmere, New York 11598 (Nassau County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties including: Radiology-X-ray services
Hours of Operation	Sunday to Thursday 8:00 am to 10:00 pm Friday 8:00 am to 6:00 pm Saturday 5:00 pm to 10:00 pm
Staffing (1st Year / 3rd Year)	11.90 FTEs / 14.80 FTEs
Medical Director(s)	Sekuleo Gathers, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Northwell Health – Long Island Jewish Valley Stream, approximately 4.9 miles away, has expressed interest as a backup hospital.

The sole member of Prime MD Center, LLC. is:

<u>Name</u>	<u>Ownership Interest</u>
<i>Benjamin Nadler</i>	<i>100.00 %</i>
Total	100.00 %

Sekuleo Gathers, M.D. is the Proposed Medical Director. He has been the Medical Director of Urgent Care Suite in New Jersey for over three (3) years. He has been an Emergency Room Physician at New Bridge Medical Center for five (5) years. He has been a Supervising/Collaborating Physician at Onyx Medical Center/NU Wave Medical for 10 years. He has been the Medical Director and Inventor at New York Physician PLLC for 15 years. He was an Emergency Physician at Queens Hospital Center for two (2) years. He was an Emergency Physician at Riverview Medical Center for three (3) years. He was an Emergency Physician at St. Mary's Hospital in New Jersey for two (2) years. He received his medical degree from the George Washington University School of Medicine. He completed his Emergency Department Residency at Mount Sinai School of Medicine. He is Board Certified in Emergency Medicine.

Mr. Benjamin Nadler was the President of Friendly Urgent Care for five (5) years. He is responsible for overseeing and managing two urgent cares located in New Jersey. He is the President and CEO of Prime Medical Supply for 29 years. He was responsible for the overall operations and management of the company which engages in the provision of home care and rehabilitation equipment and supplies.

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 disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has 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</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
	<u>Visit</u>			
Revenues:				
Commercial FFS	\$141.30	\$282,605	\$141.30	\$389,995
Commercial MC	\$120.11	1,081,009	\$120.11	1,491,791
Medicare FFS	\$97.45	487,250	\$97.45	672,405
Medicare MC	\$82.83	82,833	\$82.83	114,309
Medicaid MC	\$148.18	326,001	\$148.23	450,165
Private Pay	\$24.36	<u>9,745</u>	\$24.41	<u>13,472</u>
Total Revenue		<u>\$2,269,443</u>		<u>\$3,132,137</u>
Expenses:				
Operating	\$86.86	\$1,737,280	\$77.69	\$2,144,360
Capital	<u>\$15.50</u>	<u>310,011</u>	<u>\$11.60</u>	<u>320,242</u>
Total	\$102.36	\$2,047,291	\$89.29	\$2,464,602
Cost per Visit:				
Net Income / (Loss)		<u>\$222,152</u>		<u>\$667,535</u>
Total Visits		20,000		27,601
Cost per Visit		\$102.36		\$89.29

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

<u>Payor:</u>	<u>Years One & Three</u>
Commercial FFS	10%
Commercial MC	45%
Medicare FFS	25%
Medicare MC	5%
Medicaid M/C	11%
Private Pay	2%
Charity	<u>2%</u>
Total	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 D&TCS in New York State.
- Construction and other asset purchases have already been completed by the private practice at this location.
- Depreciation of the assets is part of the budget since it is included as part of the Asset Purchase Agreement.
- The existing private practice commenced operations on November 10, 2022.

Asset Purchase Agreement

The applicant has submitted a draft APA for the sale and acquisition of the assets purchases of the D&TC. The terms of the agreement are summarized below:

Date:	TBD
Existing Operators:	Woodmere Medical Management, LLC
New Operator:	Prime MD Center Management, LLC
Conveyed Assets:	All the tangible personal property owned by the Existing Operator, copies of the Required Certificates, promissory note setter for the obligations to party for the obligations of the purchase price to the seller. Intangibles such as required filings, documents, and documents to satisfy the buyer.
Liabilities:	Buyer shall not assume any liabilities or obligations of the sellers of any kind, whether known or unknown. (Tax returns will be the responsibility of both parties to ensure they properly represent buyer and seller agreement).
Purchase Price:	\$2,000,000 to be paid between the buyer and seller via a promissory note that has been submitted as a draft.
*Payment of Purchase Price:	Payments will be in the amount of \$40,313.92 beginning April 1, 2023. And continue until March 1, 2028, with an interest rate of 7.75% as a draft promissory note has been submitted for the purchase price consideration.

**A draft promissory note has been submitted for the stated amount in the APA, which must also be executed.*

Billing & Administrative Services Agreement

The applicant has provided an executed Billing and Administrative Agreement summarized below:

Date:	November 1, 2022
Established Operator:	Prime MD Center, LLC
Contractor:	Diamond Billing NY, LLC
Term:	One (1) year and automatically renew unless either party gives 30-days' notice
Consulting and Advisory Services:	At the request of the established operator, The McGuire Group, Inc. (TMG) shall provide consulting and advisory services related to administration and operational functions but not limited to, advice and assistance about accounts receivable, billing, accounts payable, payroll, reports, bookkeeping and miscellaneous
Clinical Services:	Administrative & Billing Services. Upon request, additional mutual services may be requested or delegated upon mutual consent.
Fees:	\$50.00 per hour billed every month.

The parties to this agreement have no relationship and an attestation service agreement was submitted. Also, the attestation states that only material changes can be made by Prime as the Reserved Powers Clause has been executed with this agreement.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site which is summarized below:

Date:	November 22, 2021
Premises:	2,870 sq. feet, located at 1000, Railroad Ave.
Lessor:	1000 Railroad, LLC
Lessee:	Matov Realty, LLC
Sub-Lessee (Assigned)	Prime MD Center, LLC (Sole Member is Benjamin Nadler)
Term of Lease:	Ten (10) year-term
Rental Amount:	Year (1) \$66,000 per year. Year (2) \$66,000 per year Year (3) \$132,000 per year Year (4) \$135,960 per year Year (5) \$140,038 per year Year (6) \$144,240 per year Year (7) \$148,567 per year Year (7) \$153,024 per year Year (8) \$157,614 per year Year (9) \$162,343 per year Year (10) \$160,733 per last
Provisions:	The tenant is responsible for utilities, no over-overload of electrical service, monitoring system, and repair contracts, and needs the approval to sublet or lease the premises.
*Amended Lease Agreement:	The draft amendment is the current lease that will allow for the Assignment and Assumption of the original executed lease.

*The first amendment to the lease dated November 22, 2021, is a modification between the landlord and tenant to allow the facility to remain unchanged as it has already been approved for Article 28 space and will remain unchanged in operations. The original 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 submitted stating the lease is an arm's length agreement, Lessor and Lessee are not related.

Assignment and Assumption of Lease

The applicant has submitted a draft assignment and assumption of the lease agreement for site control of the center. The terms are summarized below:

Assignor:	Matov Realty, LLC
Assignee:	Prime MD Center, LLC
Assigned Rights:	All the Assignor's leasehold rights, title, and interest in and to the lease of the premises consisting of 2,870 sq. ft. located at 1000, Railroad Ave. Woodmere, New York 11598
Rent:	Rental Payments will be the same as Upstate Urgent Care, PLLC and payments will be transferred to Assignee.

Capability and Feasibility

There are no project costs associated with this application. The purchase price to acquire the operations and fixed assets is \$2,000,000, funded with a draft promissory note between the buyer and seller. Working capital requirements are estimated at \$426,823, based on two months of third-year expenses. Attachment A is the sole member's net worth statement, showing sufficient equity to fund working capital.

Attachment B is the pro forma balance sheet and shows a net equity position of \$428,823 as of the first day of operations. The submitted budget projects a net income of \$222,152 and \$667,535 in Year One and Year Three, respectively. Revenues are based on prevailing reimbursement methodologies and contracted rates for this newly existing service compared to other D&TC services. The budget appears reasonable.

Conclusion

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

<h2>Attachments</h2>

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Prime – Pro forma statement
BFA Attachment C	Proposed Organizational Chart of Prime MD Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 1000 Railroad Avenue, Woodmere, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

231114 B

Prime MD Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed Billing & Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Asset Purchase Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Amended Lease Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment and Assumption of Lease Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process of enrolling 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]
4. 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]
5. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]

6. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2012 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients, and other building occupants, essential resident/patient support services, and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on-site for review by Department staff upon request. [AER]
7. This approval in no way obviates the applicant of the responsibility of complying with all applicable codes, rules, and regulations. Should violations be noted upon review of documents or found at the time of on-site inspections, or surveys, such violations shall be corrected prior to occupancy without additional costs allowed for reimbursement beyond the total project cost listed above. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 231361-B
Tidal Home Dialysis**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** September 29, 2023

Executive Summary

Description

Tidal Dialysis, LLC (The Center) seeks to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) to provide home hemodialysis and peritoneal dialysis training. The proposed D&TC will be in renovated space at 336 Himrod Street in Brooklyn (Kings County). Upon approval of this application, the center will be known as Tidal Home Dialysis.

The applicant intends to provide home hemodialysis and home peritoneal dialysis training as an alternative to in-center dialysis to reduce hospital admissions and improve the health of residents within the service area.

The proposed members and their ownership percentages are as follows:

Tidal Dialysis, LLC	
<u>Members:</u>	
Premila Bhat, M.D. *	25%
Pravin Bhat, M.D. *	25%
Denneke Tsega, M.D.	25%
Mahankali Bhavani, M.D. *	25%
Total	100%

* *managing member*

Premila Bhat, M.D., board-certified in Internal Medicine/Nephrology, will serve as the D&TC's Medical Director. All proposed members will be practicing physicians at the Center and are board-certified in their respective specialties.

Tidal will enter into a transfer agreement with Wyckoff Heights Medical Center (WHMC), located 0.2 miles (2-minute travel time). Tidal

will refer patients to WHMC for in-center services as part of the transfer agreement. Ridgewood Dialysis will serve as a backup dialysis program should the patients require in-center services.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The applicant projects 2,560 visits in Year One and 7,680 in Year Three, with 22% Medicaid, 58% Medicare, and 2% Charity Care in Year 3 of operations.

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 \$1,103,121 will be met with \$110,312 in members' equity and a five-year loan for \$992,809t.

<u>Budget:</u>	<u>Year One</u> <u>2025</u>	<u>Year Three</u> <u>2027</u>
Revenues	\$741,148	\$2,279,300
Expenses	<u>\$737,829</u>	<u>\$1,324,481</u>
Net Income (Loss)	\$3,319	\$954,819

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 20, 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. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
3. Submission of a commitment for a permanent mortgage for the project provided by a recognized lending institution at a prevailing interest rate acceptable to the Department of Health. Included with the permanent mortgage commitment must be a Sources and Uses statement and debt amortization schedule for both new and refinanced debt. [BFA]

Approval conditional upon:

1. This project must be completed by **March 15, 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 **August 15, 2024**, and construction must be completed by **December 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/Director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/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

February 8, 2024

Need Analysis

Background and Analysis

The primary service area is the Bushwick neighborhood in Kings County. The facility's proposed location is within a Health Professional Shortage Area for Primary Care, Mental Health, and Dental Health and within a Medically Underserved Area. According to US Census estimates, the Kings County population was 2,590,516 in 2022 and is projected to increase to 2,844,643 by 2028, an increase of 9.8% based on Cornell's Program on Applied Demographics. The 65+ population had an estimate of 404,121 in 2022 and is expected to increase to 460,838 by 2028, an increase of 14%. The non-white population is higher for the county than the state. These are two population groups most in need of renal dialysis services.

County Residents	Kings County	New York State
Ages 65 and Over	15.6%	18.1%
Non-white	50.4%	31.4%

Source: U.S. Census 2022

According to Data USA, in 2021, 93.4% of the population in Kings County had health coverage as follows:

Employer Plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-Group Plans	11.7%
Military or VA	0.308%

The table below shows the projected payor mix:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	10.94%	14.45%
Medicare	58.52%	58.28%
Medicaid	21.88%	21.61%
Private Pay	4.69%	3.65%
Charity Care	3.98%	2.01%
Total Visits	2,560	7,680

The projected increase in Year Three will be accomplished by ramping up and establishing the program. This facility is focused on improving access to the patient population in the area and reducing hospital readmissions. Providing home care training allows patients the freedom to perform the procedure at their convenience in their own homes. This reduces stress and travel time for the patient.

The facility will provide home hemodialysis and home peritoneal dialysis training during the hours of Monday-Friday, 8:00 am through 3:00 pm, but will have 24/7 access to their care team. The number of anticipated training visits is 2,560 in Year One and 7,680 in Year Three.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults			
PQI Rates: 2020	Zip Code 11237	Kings County	New York State
Prevention Quality Overall Composite	814	1,015	994
Prevention Quality All Diabetes Composite	216	278	234

Kings County has a higher than state average of Diabetes Preventive Quality Indicators, which have been linked to an increase in the prevalence of a need for End Stage Renal Dialysis treatment.

Conclusion

The facility will provide home hemodialysis and home peritoneal dialysis training to residents of Kings County with a focus on the Bushwick area.

Program Analysis

Project Proposal

Tidal Dialysis, LLC seeks approval for the establishment and construction of a new D&TC of a new Article 28 Diagnostic and Treatment Center for the provision of home hemodialysis and home peritoneal dialysis training. The proposed center will be in renovated space at 336 Himrod Street, Brooklyn, New York 11237 (Kings County).

Proposed Operator	Tidal Dialysis, LLC
Doing Business As	Tidal Home Dialysis
Site Address	336 Himrod Street Brooklyn, NY 11237 (Kings County)
Shift/Hours/Schedule	Monday through Saturday, 9:00 AM to 5:00 PM - as determined by scheduled training appointments.
Approved Services	Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	4.2 FTEs/10.0 FTEs
Medical Director(s)	Premila Bhat, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be: Wyckoff Heights Medical Center 0.2 miles and 2 minutes Ridgewood Dialysis will act as a backup dialysis program.

Tidal Dialysis, LLC has relationships with both Ridgewood Dialysis and Wyckoff Heights Medical Center.

Character and Competence

The proposed membership of Tidal Dialysis, LLC are:

Member Name/Title	Membership Interest
Premila Bhat, MD - Member, Manager, Medical Director	25%
Pravin Bhat, MD - Member, Manager	25%
Tsega Denneke, MD – Member	25%
Bhavani Mahankali, MD – Member	25%
Total	100%

Premila Bhat, M.D., is the proposed Medical Director. Dr. Premila Bhat graduated from Yale University School of Medicine in 1997. Dr. Bhat is registered through January 2025. Dr. Bhat is currently the Regional Medical Director (part-time) for Prine IPA. Dr. Bhat is also the medical director for Atlantic Dialysis Management Services part-time since 2016, and has a private practice in Nephrology at Mattoo and Bhat Medical Associates since 2009. Dr. Bhat is board-certified in internal medicine with a subspecialty in nephrology. Dr. Bhat has served as the Medical Director of Ridgewood Dialysis (a 43-station dialysis facility) for over 10 years. Dr. Premila Bhat is registered through January 2025.

Pravin Bhat, M.D., is a board-certified nephrologist with experience with End Stage Renal Disease for over 5 years. Dr. Bhat graduated from St. George's School of Medicine in the West Indies. Dr. Bhat completed a fellowship in Nephrology and hypertension in 2017 from Mount Sinai Beth Israel. Current employment is at Mattoo & Bhatt Medical Associates, P.C. since 2019, and also at Wyckoff Height Medical Center as an associate nephrologist since 2019, Essen Health as an associate nephrologist since 2021, and Mount Sinai Queens Hospital as an inpatient voluntary associate nephrologist since October 2021. Dr. Pravin Bhat is registered through November 2025.

Both Dr. Premila and Dr. Pravin Bhat claim offices held in the following (ownership interest held by Jodumutt Bhat – father of applicants):

From	To	Facility Name	Facility Type	% Interest
12/11/1991	Current	Ridgewood Dialysis Center	Dialysis Facility	50%
7/16/1997	Current	Newtown Dialysis Center	Dialysis Facility	50%
10/13/2000	Current	West Nassau Dialysis Center	Dialysis Facility	30%
7/30/2001	Current	New Hyde Park Dialysis Center	Dialysis Facility	25.5%
4/8/2010	Current	New Hyde Park Dialysis Center PD	Dialysis Facility	50%
6/1/2006	Current	Astoria Dialysis Center	Dialysis Facility	50%
1/5/2009	Current	Broadway Dialysis Center at EHC	Dialysis Facility	50%
1/5/2009	Current	Central Brooklyn Dialysis Center	Dialysis Facility	25%
9/1/2012	Current	Central Park Dialysis Center	Dialysis Facility	50%
11/14/2013	Current	East End Dialysis Center	Dialysis Facility	33.5%
08/13/2012	Current	Morissania Dialysis Center	Dialysis Facility	50%
3/21/2007	Current	New York Renal Associates Dialysis	Dialysis Facility	34.5%
9/26/2014	Current	Prospect Park Dialysis Center	Dialysis Facility	30%
7/24/2009	Current	Springfield Dialysis Center	Dialysis Facility	50%

Tsega Denneke, M.D., is currently a Nephrologist at Newtown Dialysis (since 1998) and Astoria Dialysis Center (since 2019). Dr. Denneke graduated from the Halle Selassie I University School of Medicine in Ethiopia (1974) and completed an internship at St. Paul and Princess Tsehay Hospital in Ethiopia (1975). He completed an Internal Medicine internship at United Hospitals Medical Center in New Jersey in 1990 and a Residency at the same hospital in 1992. He continued on to a Fellowship in Nephrology from SUNY Downstate in 1997. Dr. Denneke is registered through December 2025

Bhavani Mahankali, M.D., is an attending physician at Wyckoff Heights Medical Center in Brooklyn, NY since 2006. Dr. Mahankali graduated from Andhra University in India in 1992. Dr. Mahankali's internship was completed at Government General Hospital in India. Dr. Mahankali completed an internship and residency at Long Island College Hospital in Brooklyn and then a fellowship in Nephrology and Hypertension at Long Island College Hospital in Brooklyn, NY in 2002. Dr. Mahankali is registered through October 2024.

Compliance with Applicable Codes, Rules and Regulations

Staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Proceedings

Dr. Premila Bhat, Dr. Tsega Denneke, and Dr. Mahankali all disclosed a qui tam complaint filed on 4/13/2012 against Mattoo and Bhat Medical Associates P.C. alleging that a surgeon employed by the practice performed vascular access procedures that did not meet Medicare Guidelines and were therefore medically unnecessary. A settlement was made in 2015. The surgeon was no longer employed, and the physicians in the application were not the subject of the investigation and were not a party to the settlement agreement.

Dr. Premila Bhat also disclosed a case from 12/4/2018, Claim PRI 171070. Dr. Bhat was consulted in this case when a 63-year-old female developed a bowel perforation after undergoing surgery and later died. Dr. Bhat was consulted when the patient developed acute renal failure.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$1,103,121 and is distributed as follows:

Renovation & Demolition	\$468,000
Design Contingency	46,800
Construction Contingency	46,800
Planning Consultant Fees	25,000
Architect/Engineering Fees	36,000
Other Fees	40,000
Movable Equipment	382,803
Financing Costs	39,756
Interim Interest Expense	9,939
Application Fee	2,000
Additional Processing Fee	<u>6,023</u>
Total Project Cost	\$1,103,121

The financing for this project will be as follows:

Cash	\$110,312
Construction Loan (5 years, 6% interest)	<u>\$992,809</u>
Total	\$1,103,121

Operating Budget

The applicant submitted an operating budget, in 2024 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$358.93	\$50,250	\$359.63	\$219,375
Commercial MC	\$358.93	50,250	\$360.00	180,000
Medicare FFS	\$314.00	172,072	\$314.00	785,000
Medicare MC	\$314.00	298,300	\$314.00	620,464
Medicaid FFS	\$218.35	26,202	\$218.35	78,606
Medicaid MC	\$218.35	96,074	\$218.35	283,855
Private Pay	\$400.00	<u>48,000</u>	\$400.00	112,000
Total Revenue		\$741,148		\$2,279,300
Expenses:				
Operating	\$176.13	\$450,896	\$138.64	\$1,064,772
Capital	<u>112.08</u>	<u>286,933</u>	<u>33.82</u>	<u>259,759</u>
Total	\$288.21	\$737,829	\$172.46	\$1,324,481
Net Income / (Loss)		<u>\$3,319</u>		<u>\$954,819</u>
Total Procedures		2,560		7,680
Cost per Procedure		\$288.21		\$172.46

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

<u>Payor:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	5.47%	7.94%
Commercial MC	5.47%	6.51%
Medicare FFS	21.41%	32.55%
Medicare M/C	37.11%	25.73%
Medicaid FFS	4.69%	4.69%
Medicaid M/C	17.19%	16.93%
Private Pay	4.69%	3.65%
Charity	<u>3.98%</u>	<u>2.01%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The basis for utilization and payor mix is based on the experience of the proposed operators. The increase in utilization between Years One and Three is based on the expanded growth of the existing population served by Tidal.
- The Medicaid rates are based on Medicaid APG and Medicaid fee-for-service rates. Medicare rates are based on Medicare Part B billing schedules.
- Commercial insurance and private pay rates are based on the experience of other programs that operate this home hemodialysis and home peritoneal dialysis training and support services.
- Revenues and expenses are based on actual experience of the existing medical practice.
- Expenses are based predominantly on the labor costs for the staffing model that includes Registered Nurses (2.00 FTE by year three), Technicians and Specialists (at 1.00 FTEs by year three), Social Workers (1.00 FTE by year three), Infection Control (2.00 FTEs by year three), Clerical and Other Administrative staff (3.00 FTEs by year three) Management and Supervision (1.00 FTEs by year three), as well as medical supplies, and other direct expenses as documented per the sublease agreement.

The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The Center is developing and will have a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

Lease Agreement

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

Date:	July 31, 2023
Premises:	4,477 sq. ft in a building located at 342 Himrod Street, Brooklyn, New York.
Landlord:	Himrod Development LLC
Tenant:	Mattoo & Bhat Medical Associates, P.C.
Term:	15-year term
Rent:	\$210,000 annually (\$17,500 per month), rent shall increase 3% annually.
Security Deposit:	\$35,000
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance.

Sublease Agreement

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

Date:	June 20, 2023
Subleased Premises:	2,238 sq. ft. in a building located at 342 Himrod Street, Brooklyn, New York.
Prime Landlord:	Himrod Development LLC
Sublandlord:	Mattoo & Bhat Medical Associates, P.C.
Subtenant:	Tidal Dialysis, LLC

Term:	15-year term
Rent:	\$105,000 annually (\$8,750 per month), rent shall increase 3% annually.
Security Deposit:	\$17,500
Provisions:	Subtenant is responsible for real estate taxes, insurance, utilities, and maintenance.

The applicant submitted an affidavit indicating there is no relationship between Himrod Development LLC as landlord, and Mattoo & Bhat Medical Associates P.C., as tenant. With respect to the sublease agreement, the applicant provided an affidavit indicating that there is a familiar relationship between sublandlord, Mattoo & Bhat Medical Associates P.C., and subtenant, Tidal Dialysis, LLC as such, this is a non-arms-length transaction. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per-square footage rental.

Capability and Feasibility

Total project cost of \$1,103,121 will be met with \$110,312 in members' equity and a five-year loan for \$992,809 at 6% interest. Working capital is estimated at \$220,747 and is based on two months of third-year expenses and will be funded with members' equity of \$110,374 and a bank loan of \$110,373 for a three-year term at 6% interest. Hudson Shine Capital has provided a letter of interest for the respective loans at the stated terms. BFA Attachment A presents the Member's Net Worth Statement, indicating sufficient resources to fund the equity requirements. BFA Attachment C presents Tidal Dialysis' Pro Forma Balance Sheet, which shows the operation will start with \$220,747 in members' equity.

The submitted budget projects a net income of \$3,319 and \$954,819 during Years One and Three of operations, respectively. Revenue growth is based on utilization between Year One and Year Three, driven by an increase in the existing population served by the proposed center. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Member of Tidal
BFA Attachment B	Organization Chart
BFA Attachment C	Pro-Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 336 Himrod Street, Brooklyn, NY and certify Home Hemodialysis Training and Support and Home Peritoneal Dialysis Training and Support, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

231361 B

Tidal Home Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
3. Submission of a commitment for a permanent mortgage for the project provided by a recognized lending institution at a prevailing interest rate acceptable to the Department of Health. Included with the permanent mortgage commitment must be a Sources and Uses statement and debt amortization schedule for both new and refinanced debt. [BFA]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **March 15, 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 **August 15, 2024**, and construction must be completed by **December 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/Director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 231120-E
Health Quest Home Care, Inc. (Licensed)**

Program: LHCSA
Purpose: Establishment

County: Dutchess
Acknowledged: April 27, 2023

Executive Summary

Description

Health Quest Home Care, Inc., a not-for-profit Licensed Home Care Services Agency (LHSCA), requests approval to transfer ownership interest above the grandparent level to Nuvance Health.

The applicant serves the residents of the following counties from an office located at 2469 South Road, Suite 220, Poughkeepsie, New York 12601:

- Dutchess
- Putnam
- Ulster
- Orange

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide

OALTC Recommendation

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.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

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 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 is recommended.

Council Action Date

February 8, 2024

Program Analysis

Program Description

Health Quest Home Care, Inc. is seeking approval to transfer 100% of its ownership interest above the parent level to Nuvance Health.

The applicant serves residents of the following counties from an office at 2469 South Road, Suite 220, Poughkeepsie, New York 12601:

- Dutchess
- Putnam
- Ulster
- Orange

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide

Health Quest Systems, Inc. is the sole member of Health Quest Home Care, Inc. (Certified) and will become the sole member of Health Quest Home Care, Inc. (Licensed) at the approval of the CON. Nuvance Health is the sole member of Health Quest Systems, Inc. and the grandparent of Health Quest Home Care, Inc. (Certified). Once approved, Nuvance Health will then become the grandparent of Health Quest Home Care, Inc. (Licensed).

Character and Competence Review

Health Quest Home Care, Inc. is comprised of the following individuals:

John Murphy, M.D. - Chief Executive Officer, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital	(April 1, 2019 - Present)
Northern Dutchess Residential Care	(April 1, 2019 - Present)
Putnam Hospital	(April 1, 2019 - Present)
Vassar Brothers Medical Center	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (LHSCA)	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (CHHA)	(April 1, 2019 - Present)
Alamo Ambulance Service, Inc.	(April 1, 2019 - Present)
Sharon Hospital	(April 1, 2019 - Present)
Danbury Hospital	(April 1, 2019 - Present)
Norwalk Hospital	(April 1, 2019 - Present)
Western CT Home Care, Inc.	(April 1, 2019 - Present)

Anne Roby – Board Chair, Director, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital	(April 1, 2019 - Present)
Northern Dutchess Residential Care	(April 1, 2019 - Present)
Putnam Hospital	(April 1, 2019 - Present)
Vassar Brothers Medical Center	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (LHSCA)	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (CHHA)	(April 1, 2019 - Present)
Alamo Ambulance Service, Inc.	(April 1, 2019 - Present)
Sharon Hospital	(April 1, 2019 - Present)
Danbury Hospital	(April 1, 2019 - Present)
Norwalk Hospital	(April 1, 2019 - Present)

Western CT Home Care, Inc. (April 1, 2019 - Present)

Steven Lant – Board Vice Chair, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
Northern Dutchess Residential Care (April 1, 2019 - Present)
Putnam Hospital (April 1, 2019 - Present)
Vassar Brothers Medical Center (April 1, 2019 - Present)
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Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)
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Sharon Hospital (April 1, 2019 - Present)
Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Elizabeth Bradley – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
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Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Robert Dyson – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
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Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Syed Javid Shahid – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
Northern Dutchess Residential Care (April 1, 2019 - Present)
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Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Ervin Shames – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
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Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Joseph DiVestea – Board Member, Health Quest Systems, Inc.

Affiliations

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Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Richard Jabara – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
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Putnam Hospital (April 1, 2019 - Present)
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Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Daniel McCarthy – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
Northern Dutchess Residential Care (April 1, 2019 - present)
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Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Michael Nesheiwat – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
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Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Gregory Rakow – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
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Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Salvatore Calta Jr – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
Northern Dutchess Residential Care (April 1, 2019 - Present)
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Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

David Cyganowski – Board Member, Health Quest Systems, Inc.

Affiliations

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Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Mark Gudis – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
Northern Dutchess Residential Care (April 1, 2019 - Present)
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Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

Donald Jones – Board Member, Health Quest Systems, Inc.

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)
Northern Dutchess Residential Care (April 1, 2019 - Present)
Putnam Hospital (April 1, 2019 - Present)
Vassar Brothers Medical Center (April 1, 2019 - Present)
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Sharon Hospital (April 1, 2019 - Present)
Danbury Hospital (April 1, 2019 - Present)
Norwalk Hospital (April 1, 2019 - Present)
Western CT Home Care, Inc. (April 1, 2019 - Present)

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 Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Diagnostic & Treatment Centers and reports the following:

- Vassar Brothers Medical Center was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated October 29, 2021, for the Condition of Participation (COP) of Surgical Services allegation.

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.

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 retainment of the workforce was adequately addressed in their project narrative. 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 New York State Public Health Law §3605.

<h2>Attachments</h2>

OALTC Attachment A

Workforce Review

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of February, 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer ownership interest above the parent level, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

231120 E

Health Quest Home Care, Inc. (Licensed)

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 232088-E

Sheepshead Bay Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Kings
Acknowledged: September 20, 2023

Executive Summary

Description

Sheepshead Bay Surgery Center, Inc. (SBSC or the "Center"), a proprietary business corporation that operates an Article 28 freestanding ambulatory surgery center (FASC) at 2269 Ocean Avenue, Brooklyn (Kings County), requests approval to redeem ten (10) shares, representing 5% of the common shares in SBSC, from David Edelstein, M.D., an existing shareholder, who passed away. SBSC proposes transferring the redeemed shares to Dr. Deborah Silberman, M.D., an existing shareholder with a current 9.9% ownership interest in the FASC. The purchase price for the ten (10) redeemed shares is \$200,000 and will be funded with Dr. Silberman's resources. Dr. Silberman's ownership share in SBSC will be 14.9% after the transfer. The amount for which SBSC redeemed the shares is identical to the purchase price.

The Center is licensed to provide single-specialty ophthalmology services. There will be no change in services upon the change in membership interest. Deborah Silberman, M.D., who is Board-Certified in Ophthalmology, will continue to serve as the Medical Director at the Center.

OPCHSM Recommendation

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 for this application. The total purchase price for the 5% ownership interest is \$200,000 and will be funded with Dr. Silberman's personal equity. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no changes in services or location.

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

February 8, 2024

Program Analysis

Program Proposal

Sheepshead Bay Surgery Center, Inc., an existing Article 28 Ambulatory Surgery Center, seeks approval to redeem 10 shares (5%) of ownership interest from a deceased member. Those 10 shares (5%) will be purchased by Dr. Deborah Silberman M.D. Through the transaction, Dr. Silberman will increase her ownership from less than 10% to greater than 10%. The existing facility is located at 2269 Ocean Avenue, Brooklyn, NY 11229 (Kings County). There will be no change in services as a result of this application.

Character and Competence

The proposed membership of Sheepshead Bay Surgery Center is provided in the chart below.

Member Name/Title	Current Ownership	Proposed Ownership
Thomas Aiello, M.D.	1.0%	1.0%
Natalie Borodoker, M.D.	2.1%	2.1%
Keith Chang, M.D.	19.9%	19.9%
David Edelstein, M.D.	5.0%	0%
Albert Hazan, M.D.	1.0%	1.0%
Darlene Isola/Chief Executive Officer	0%	0%
Andrea Jue, M.D.	1.0%	1.0%
John Kung, M.D.	19.9%	19.9%
Kevin Lai, M.D.	1.0%	1.0%
David Pinhas, M.D./President	19.9%	19.9%
Raphael Rosenbaum, M.D./Treasurer	16.3%	16.3%
Mehryar Sadeghi, M.D.	1.0%	1.0%
Deborah Silberman, M.D./Vice President	9.9%	14.9%
Rumei Yuan, M.D.	2.0%	2.0%
TOTAL	100%	100%

No new members, Deborah Silberman, M.D. now owns over 10%

Deborah Silberman, M.D., is the Medical Director of Sheepshead Bay Surgical Center since 2017. Additionally, Dr. Silberman operates a private practice since 1992. Dr. Silberman received a medical degree from The University at Buffalo School of Medicine. Internal Medicine Internship was completed at St. Luke's Hospital. Ophthalmology Residency was completed at Brookdale University Medical Center. Dr. Silberman discloses a malpractice case settled in 2000. Dr. Silberman discloses ownership interest in the following:

Sheepshead Bay Surgery Center

02/01/2015 - present

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 disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database. Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

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

Financial Analysis

Redemption Agreement

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

Date:	August 28, 2023
Company:	Sheepshead Bay Surgery Center, Inc.
Shareholder:	David Edelstein, M.D.
Redeemed Shares:	10 shares of common stock out of 200 outstanding shares.
Transaction:	The shareholder desires to redeem the shares, and the company desires to purchase the shares.
Purchase Price:	\$200,000 (\$20,000 per share)
Conditions:	To be paid by the company to the shareholder within five (5) business days of receiving the signed Redemption Agreement.

Subscription Agreement

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

Date:	September 23, 2023
Company:	Sheepshead Bay Surgery Center, Inc. d/b/a Sheepshead Bay Surgery Center
Subscriber:	Deborah Silberman M.D.
Common Shares:	10 common shares of the company, representing 5% of the issued and outstanding common shares.
Subscription Price:	\$200,000 (\$20,000 per share)

BFA Attachment A presents Deborah Silberman's Net Worth Statement, which indicates sufficient liquid resources to fund the total purchase price.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the ten (10) shares is \$200,000 and will be funded with Dr. Silberman's personal equity. BFA Attachment A indicates sufficient resources to fund the total purchase price.

A summary of the 2022 Certified Financial Statements for Sheepshead Bay Surgery Center, Inc., is presented as BFA Attachment C. For the year-end December 31, 2022, SBSC reported positive working capital, positive net assets, and a net income of \$1,494,488. BFA Attachment D summarizes the Internal Financial Statements for Sheepshead Bay Surgery Center, Inc. for the period ending October 31, 2023, during which SBSC reported a positive working capital position, a positive net asset position, and a net income of \$1,013,327.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement – Deborah Silberman
BFA Attachment B	Current and Post-Purchase Ownership Interest
BFA Attachment C	2022 Certified Financial Statements – Sheepshead Bay Surgery Center
BFA Attachment D	October 2023 Internal Financial Statements – Sheepshead Bay Surgery Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of February, 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 5% ownership interest from a deceased shareholder to an existing shareholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

232088 E

Sheepshead Bay Surgery Center

APPROVAL CONTINGENT UPON:

N/A

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 232080-B
Alef Health Center LLC

Program: Diagnostic and Treatment Center County: Richmond
Purpose: Establishment and Construction Acknowledged: November 6, 2023

Executive Summary

Description

Alef Health Center, LLC (the "Center"), a New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 3777 Richmond Avenue, Staten Island (Richmond County). The Center will provide Primary Medical Care and Other Medical Specialties, including Pediatrics, Internal Medicine, Neurology, and Podiatry. Behavioral and mental health services will be provided to the extent regulation allows.

Alef Health Center LLC plans to provide comprehensive diagnostic and treatment services for chronic diseases and has outreach programs to improve primary and specialized care access.

Anne Gershkowitz is the sole member of Alef Health Center, LLC.

Elizabeth Ann Kulesza, M.D., will serve as the Center's Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Richmond University Medical Center, located 8.6 miles (23 minutes travel time) from the Center.

OPCHSM Recommendation
Contingent Approval

Need Summary
The applicant projects 7,800 visits in Year One and 13,000 visits in Year Three, with Medicaid at 80% and Charity Care at 2%

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

Financial Summary
The total project costs of \$375,146 will be met with the members' equity.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues (\$1,136,148 vs \$1,893,580), Expenses (1,020,076 vs \$1,576,671), and Gain/(Loss) (\$116,072 vs \$316,909).

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of a photocopy of an executed copy of the Lease Agreement acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed copy of the Articles of Organization acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **December 15, 2024**, 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 15, 2024**, and construction must be completed by **September 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area comprises zip codes 10312, 10306, 10308, 10309, and 10314 in Richmond County. Cornell's Program on Applied Demographics projects the county's population to decrease to 487,631 or 0.7% while its 65+ population increases to 106,871 or 25.1% by 2028. Demographics for the primary service area are noted below including a comparison with the county and New York State.

Demographics	Primary Service Area	Richmond County	New York State
Total Population – 2021 Estimate	279,661	491,133	20,114,745
Hispanic or Latino (of any race)	13.32%	18.8%	19.2%
White (non-Hispanic)	71.57%	55.7%	54.7%
Black or African American (non-Hispanic)	2.34%	9.0%	13.9%
Asian (non-Hispanic)	10.41%	13.0%	8.6%
Other (non-Hispanic)	2.36%	3.5%	3.6%

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

In 2021 95.9% of the population in Richmond County had health coverage as follows.

Employer Plans	55.4%
Medicaid	17.9%
Medicare	12.4%
Non-Group Plans	9.85%
Military or VA	0.305%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	7.00%	7.00%
Medicare	8.00%	8.00%
Medicaid	80.00%	80.00%
Private Pay	1.00%	1.00%
Charity Care	2.00%	2.00%
Other	2.00%	2.00%
Total Visits	7,800	13,000

The applicant seeks to be certified for Primary Care and Other Medical Services including pediatrics, internal medicine, neurology, and podiatry. The applicant plans to address the growing elderly population and the rise in mental health concerns in the area. Hours of operation will be Sunday - Friday, 9:00 AM-6:00 PM.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults			
PQI Rates: 2020	Primary Service Area	Richmond County	New York State
Prevention Quality Overall Composite	833	931	994
Prevention Quality All Diabetes Composite	201	251	234

Conclusion

The applicant plans to provide a comprehensive set of services to the community to enhance primary care, improve patient outcomes, and reduce re-hospitalizations in southeastern Richmond County.

Program Analysis

Project Proposal

Proposed Operator	Alef Health Center, LLC
To Be Known As	Alef Health Center, LLC
Site Address	3777 Richmond Ave., Lower Level Staten Island, NY 10312 (Richmond County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Neurology
Hours of Operation	Sunday through Friday 9 am – 6 pm (54 hours per week)
Staffing (1st Year / 3rd Year)	6.5 FTEs / 9 FTEs
Medical Director(s)	Elizabeth Kulesza, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Richmond University Medical Center/ Staten Island University Hospital 8.6 miles/ 23 minutes away

*Staffing is based on the experience similar to D&TC in NY State

Character and Competence

The sole member of Alef Health Center, LLC is:

Name	Ownership Interest
Anne Gershkowitz DDS- Owner	100%
Total	100.00%

BH/MH program will not include a psychiatrist and will follow regulation limitations of 30% or 10,000 visits.

Dr. Elizabeth Kulesza is the proposed Medical Director. Dr. Kulesza graduated from the Autonomous University of Guadalajara in Jalisco Mexico in 1979 and completed an internship at Rutgers Medical School in NJ in 1986. A Residency in Internal Medicine at Harlem Hospital center in 1988, a clinical fellowship in Nephrology at Booth Memorial Medical Center in 1990, and a residency in Internal medicine at St. Barnabas MC in 1992. The most recent work experience is from Wellcare of BX Medical PC in the Bronx since 2021. Prior to that she worked at Medical Impressions in the Bronx as attending physician since 2014. The CV includes a Medical Director position from 2011 – 2013 at ARC of Rockland and at Dr. Robert L Yeager Health Center. She is registered through July 2025.

Dr. Anne Gershokowitz, DDS is the owner of ALEF Health Center, LLC. She is registered through September 30, 2026, and has managed a private practice dental surgery clinic for 20 years. She has ownership in Bezalel Care Management (100%), Sola Dental Spa P.C. (100%), and All Heart Homecare Agency, Inc. (70%).

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 disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$375,146, broken down as follows:

Renovation & Demolition	\$300,000
Architect/Engineering Fees	36,000
Movable Equipment	35,105
CON Application Fee	2,000
CON Processing Fee	<u>2,041</u>
Total Project Cost	\$375,146

The applicant's financing plan appears as follows:

Equity	\$375,146
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BFA Attachment A presents the member's net worth, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted first and third-year operating budgets in 2024 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-MC	\$159	\$992,160	\$159	\$1,653,600
Medicare-FFS	\$98	45,864	\$98	76,440
Medicare-MC	\$83	12,948	\$83	21,580
Commercial-FFS	\$109	34,008	\$109	56,680
Commercial-MC	\$92	21,528	\$92	35,880
Private Pay	\$20	1,560	\$20	2,600
All Other	\$180	<u>28,080</u>	\$180	<u>46,800</u>
Total		\$1,136,148		\$1,893,580
Expenses:				
Operating	\$104	\$812,700	\$104	\$1,353,700
Capital	<u>\$27</u>	<u>207,376</u>	<u>\$17</u>	<u>222,971</u>
Total	\$131	\$1,020,076	\$121	\$1,576,671
Net Income		\$116,072		\$316,909
Total Visits		7,800		13,000

The following is noted concerning the submitted budget:

- The rate assumptions by payor sources were determined based on the experience of similar D&TC and using the APG provider manual and fee schedules.
- The utilization assumptions took into consideration the high prevalence of chronic diseases such as diabetes and heart disease, challenges related to access to healthcare, the rise in mental health concerns, and the experience of similar D&TC.
- Staffing will be based on demand. Staffing includes two physicians in the first year and three by the third year. In the first and third years, an additional 4.5 FTEs and 6 FTEs will support the D&TC operation.
- Breakeven utilization for the first year is 7,004 visits.

Utilization broken down by payor source during Year One and Year Three is as follows:

Payor:	Year One		Year Three	
	2024		2026	
	Visits	%	Visits	%
Medicaid-MC	6,240	80%	10,400	80%
Medicare-FFS	468	6%	780	6%
Medicare-MC	156	2%	260	2%
Commercial-FFS	312	4%	520	4%
Commercial-MC	234	3%	390	3%
Private	78	1%	130	1%
Charity	156	2%	260	2%
All Other	156	2%	260	2%
Total	7,800	100%	13,000	100%

Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site, the terms of which are summarized below:

Premises:	1,293 square feet located at 3777 Richmond Avenue, Staten Island 10312
Landlord:	3777 Richmond Ave, LLC
Lessee:	ALEF Health Center, LLC
Term:	Ten years
Payment:	\$114,000 for the 1 st year. The annual rent increase is 5% per year (for years two (2) through five (5) and 3% (for years six (6) through ten (10) of the term. (\$88.16 per sq. ft.)
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as a relationship exists between landlord and tenant. Anne Gershkowitz, DDS, and her husband Steven Gershkowitz each own 50% of 3777 Richmond Ave, LLC. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

Capability and Feasibility

The total project costs of \$375,146 will be met with member's equity. Working capital requirements are estimated at \$262,779, based on two months of third-year expenses and funded with member's equity. The review of BFA Attachment A reveals sufficient resources to meet all the equity requirements. BFA Attachment B presents Alef Health Center, LLC's pro forma balance sheet that shows operations will have \$637,939 in equity as of the first day of operations. The Center projects an operating surplus of \$116,072 and \$316,909 in Year One and Year Three, respectively. The applicant's budgets appear to be reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of Member of ALEF Health Center, LLC
BFA Attachment B	Pro Forma Balance Sheet of ALEF Health Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 3777 Richmond Avenue, Staten Island, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

232080 B

FACILITY/APPLICANT:

ALEF Health Center LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of a photocopy of an executed copy of the Lease Agreement acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed copy of the Articles of Organization acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **December 15, 2024**, 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 15, 2024**, and construction must be completed by **September 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.

Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 232106-B
New York Healthcare and Wellness

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: October 16, 2023

Executive Summary

Description

New York Healthcare & Wellness, LLC, a New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 3005 Grand Concourse (Bronx County). The applicant will lease space spanning three floors of a nine-story medical office building currently under construction. The cellar level will contain a physical therapy suite. The first floor will have a pharmacy and clinical exam space. The second floor will also contain clinical exam space. The site will include 17 exam rooms and the requisite support areas. The D&TC will be known as New York Healthcare & Wellness upon approval.

The new D&TC will provide Primary Medical Care, Physical Therapy, and Other Medical Specialties, including Gynecology, Neurology, Podiatry, Gastroenterology, Pediatrics, Pain Management, Orthopedics, Oncology, Endocrinology, Cardiology, Ophthalmology, and Urology. The facility plans to provide Behavioral and Mental Health services, which are not expected to exceed the 30% of visits threshold.

The proposed members of New York Healthcare and Wellness, LLC are Herman Patel, MD (60%) and Sweta Patel (40%). Hemant Patel, M.D., is Board-Certified in Internal Medicine and will serve as the Center's Medical Director.

The applicant is negotiating an Affiliation and Transfer Agreement with Montefiore Hospital, 1 mile and 5 minutes away.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 22,469 visits in Year One and 47,435 in Year Three, with Medicaid at 63% 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

Total project costs of \$4,799,823 will be met with \$601,284 from the applicant and \$4,198,539 from the landlord. The applicant will contribute \$85,548 in equity and finance \$515,736. The landlord will contribute \$198,539 in equity and finance \$4,000,000.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues, Expenses, and Gain/(Loss).

Health Equity Impact Assessment

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. (AER)
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 (AER)
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. (HSP)
5. Submission of an executed loan commitment to the applicant acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment acceptable to the Department of Health. (BFA)

Approval conditional upon:

1. This project must be completed by **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 **December 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. [HSP]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area for this project is the Kingsbridge Heights and Bedford neighborhoods in **the Bronx**. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Dental Health, and Mental Health and is also within a Medically Underserved Area (MUA). The population of Bronx County is estimated to increase to 1,590,942 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 8.4%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Primary Service Area	Bronx County	New York State
Total Population – 2021 Estimate	82,480	1,468,262	20,114,745
Hispanic or Latino (of any race)	79.3%	56.1%	19.2%
White (non-Hispanic)	2.6%	9.0%	54.7%
Black or African American (non-Hispanic)	13.8%	28.5%	13.9%
Asian(non-Hispanic)	2.6%	3.7%	8.6%
Other (non-Hispanic)	1.7%	2.7%	3.6%

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

In 2021, 92.2% of the population of Bronx County had health coverage as follows:

Employee plans	30.7%
Medicaid	42.3%
Medicare	6.78%
Non-group plans	12.0%
Military or VA plans	0.4%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	14%	14%
Medicare	18%	18%
Medicaid	63%	63%
Private Pay	3%	3%
Charity Care	2%	2%
Other	0%	0%

Hours of operation at the initial start-up will be Monday-Friday 9:00 am-8:00 pm and Saturday and Sunday from 9:00 am -2:00 pm. Hours will change to accommodate the needs of the community and as the patient base grows.

This project will serve all patients needing care, regardless of their ability to pay or the source of payment.

The applicant is negotiating an Affiliation and Transfer Agreement with Montefiore Hospital 1 mile and 5 minutes away, for backup hospital services.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

Hospital Admissions per 100,000 Adults			
PQI Name	Primary Service Area	Bronx County	New York State
Chronic Obstructive Pulmonary Disease or Asthma	454	531	244
Hypertension	141	129	63
Heart Failure	385	444	336
Bacterial Pneumonia	69	117	105
Uncontrolled Diabetes	83	100	45
Prevention Quality Overall Composite	1361	1578	994

Conclusion

Approval of this project will allow for expanded access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, Podiatry O/P, and Therapy - Physical O/P for the residents of Bronx County.

Program Analysis

Project Proposal

New York Healthcare and Wellness, LLC seeks approval to establish and construct a new Article 28 diagnostic and treatment center to be located at 3005 Grand Concourse, Bronx, NY (Bronx County). The proposed center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties, and behavioral and mental health services, to the extent regulation allows.

Proposed Operator	New York Healthcare and Wellness, LLC
To Be Known As	New York Healthcare and Wellness
Site Address	3005 Grand Concourse Bronx, NY 10468 Bronx County
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties -Neurology -Gastroenterology -Orthopedics -Oncology -Endocrinology -Cardiology -Urology Podiatry O/P Therapy – Physical O/P
Hours of Operation	Initially: Monday-Friday 9:00 am to 8:00 pm Saturday and Sunday 9:00 am to 2:00 pm Hours will change to accommodate the needs of the community as the patient base grows
Staffing (1st Year / 3rd Year)	26.41 FTEs / 64.30 FTEs
Medical Director(s)	Hemant Patel, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Montefiore Medical Center 5 minutes away or 1 mile.

Behavior and Mental Health services are not expected to exceed 30% of visits.

Character and Competence

The members of New York Healthcare and Wellness, LLC. are:

Name	Ownership Interest
Dr. Hemant Patel, MD	60%
Sweta Patel	40%
Total	100.00%

Dr. Hemant Patel is part owner of the Diagnostic and Treatment Center and is proposed as the co-manager and Medical Director. He has been in Hemant Patel Private medical practice since 1987. He has also been employed with Harlem Medical Group, P.C. since 2012. Finally, Dr. Patel serves as the Director of Ambulatory Service at Touro College of Osteopathic Medicine since 2011. Dr. Patel Graduated from B.J. Medical College, Gujarat University in India, and served a residency at Cabrini Medical Center in New York. Upon request, he disclosed an ongoing medical case. He is registered through March 2025.

Sweta Patel is the proposed co-manager. Sweta Patel has worked at Hemant Patel MD P.C. since 1992. Sweta Patel is the Director for credentialing and Billing. She holds responsibilities to monitor revenue cycle management including but not limited to coding, billing, AR, and quality measures.

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 disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

- *Dr. Patel disclosed upon request that on May 17, 2019, an action was filed against him alleging neglect. The case is currently ongoing and is expected to settle within Dr. Patel's policy limits.*

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$4,799,823, broken down as follows:

Renovation & Demolition	\$3,114,780
Site Development	518,323
Design Contingency	311,478
Construction Contingency	155,739
Architect/Engineering Fees	158,220
Other Fees	65,000
Movable Equipment	432,889
Financing Costs	15,150
CON Application Fee	2,000
CON Processing Fee	<u>26,244</u>
Total Project Cost	\$4,799,823

The applicant's financing plan appears as follows:

Applicant - Cash Equity	\$85,548
Applicant - Loan (6% interest, 5-year term)	515,736
Landlord - Cash Equity	198,539
Landlord - Loan (10-year, approx. 8.04%, 25-year amortization)	<u>4,000,000</u>
Total	\$4,799,823

BFA Attachment A.1 presents the operating members' net worth, which shows sufficient resources to meet the equity requirement. Hudsonshine Capital has provided a letter of interest for the loans. BFA Attachment A.2 presents the 3005 GC, LLC (Landlord) members' net worth, which shows sufficient resources to meet the equity requirements. Orange Bank & Trust Company is currently providing a one-year construction loan, interest only at the Federal Home Loan Bank of New York (FHLBNY) with a fixed advance rate plus 2.5% or 8.04% as of 11-29-23. Upon construction completion, it will be converted to a 10-year loan at FHLBNY plus 2.5% or a floating rate tied to prime with a 25-year amortization.

Operating Budget

The applicant has submitted first and third-year operating budgets in \$2024, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2026</u>		<u>2028</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$197.14	\$88,515	\$197.14	\$187,083
Medicaid-MC	\$167.57	2,296,669	\$167.57	4,848,709
Medicare-FFS	\$165.00	556,050	\$165.00	1,173,975
Medicare-MC	\$140.25	94,529	\$140.25	199,576
Commercial-FFS	\$165.00	370,755	\$165.00	782,760
Commercial-MC	\$140.25	126,085	\$140.25	266,054
Private Pay	\$200.00	<u>135,000</u>	\$200.00	<u>284,400</u>
Total		\$3,667,603		\$7,742,557
Expenses:				
Operating	\$123.38	\$2,772,123	\$121.56	\$5,766,185
Capital	<u>\$30.61</u>	<u>687,675</u>	<u>\$14.38</u>	<u>682,135</u>
Total	\$153.99	\$3,459,798	\$135.94	\$6,448,320
Net Income		\$207,805		\$1,294,237
Total Visits		22,469		47,435

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2026</u>		<u>2028</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	449	2.00%	949	2.00%
Medicaid-MC	13,706	61.00%	28,936	61.00%
Medicare-FFS	3,370	15.00%	7,115	15.00%
Medicare-MC	674	3.00%	1,423	3.00%
Commercial-FFS	2,247	10.00%	4,744	10.00%
Commercial-MC	899	4.00%	1,897	4.00%
Private Pay	675	3.00%	1,422	3.00%
Charity	<u>449</u>	<u>2.00%</u>	<u>949</u>	<u>2.00%</u>
Total	22,469	100%	47,435	100%

The following is noted concerning the submitted budget:

- Medicaid Fee for Service rate is based upon the basic per-visit rate plus capital obtained from the Bureau of D&TC Reimbursement. Medicaid Managed Care is assumed to be 85% of the Medicaid FFS's basic rate.
- The Medicare Fee for Service rate is based on the Medicare Part B fee schedule, with the Managed Care assumed to be at 85%. The Commercial Fee for Service rate is based on the Medicare Part B fee schedule, while managed care is discounted by approximately 85%.
- Staffing is based on the applicant's experience and incorporates the New York State Department of Health staffing requirements. For the first year, there will be 26.41 FTEs, of which 5.14 FTE will be physicians. For the third year, there will be 64.30 FTEs, of which 10.84 will be physicians.
- Expenses are based on the applicant's experience and review of previously submitted Medicaid cost reports (AHCF-1).
- Utilization by payor source is based on the demographic of the service area, which includes Kingsbridge Heights and Bedford. The Center will be in Bronx Community District 7. A Health Care Professional Shortage Area concerning primary care, mental health, and dental health. It has been designated as a medically underserved area.

- The operators will engage with community leaders, schools, hospitals, community centers, and religious institutions to inform them of their presence. It can be a resource for education and advocacy as well as treatment.
- Breakeven utilization for the first year is 21,196 visits.

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site, the terms of which are summarized below:

Date:	July 31, 2023
Premises:	12,483 square feet located at 3005 Grand Concourse, Bronx, NY 10468
Landlord:	3005 GC, LLC
Lessee:	New York Healthcare & Wellness, LLC
Term:	Five years, three (3) year renewals
Payment:	\$540,000 per year, rent increase 3% per year (\$43.26 per sq. ft.)
Provisions:	Triple Net

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as a relationship exists between landlord and tenant. The costs associated with the landlord’s construction costs are included in the lease agreement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

Capability and Feasibility

Total project costs of \$4,799,823 will be met through \$601,284 from the applicant and \$4,198,539 from the landlord. The applicant members will contribute \$85,548 in equity and finance \$515,736 through Hudsonshine Capital for five years at the bank’s five-year cost of funds with an indicative rate of 6%. The landlord will contribute \$198,539 in equity and finance \$4,000,000. Orange Bank & Trust Company currently provides a one-year construction loan, interest only at the Federal Home Loan Bank of New York (FHLB NY) fixed advance rate plus 2.5% or 8.04% as of 11-29-23. Upon construction completion, it will be converted to a 10-year loan at FHLB NY plus 2.5% or a floating rate tied to prime with a 25-year amortization.

Working capital requirements are estimated at \$1,074,720, based on two months of third-year expenses, and will be funded with \$537,360 from member equity, with the \$537,360 balance satisfied through a three-year loan from Hudsonshine Capital at the firm’s five-year cost of funds at an indicative interest rate of 6%. Hudsonshine Capital has provided a letter of interest. A review of BFA Attachments A.1 reveals that the applicant members have sufficient resources to meet all the equity requirements. BFA Attachment B presents New York Healthcare & Wellness, LLC’s Pro Forma Balance Sheet and shows operations will start with \$594,664 equity. The Center projects an operating surplus of \$207,805 and \$1,294,237 in the first and third years. The applicant’s budgets appear to be reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A.1	Net Worth Statements of Members of New York Healthcare & Wellness, LLC
BFA Attachment A.2	Net Worth Statements of Members of 3005 GC, LLC
BFA Attachment B	Pro Forma Balance Sheet of New York Healthcare & Wellness, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish a new Diagnostic and Treatment Center at 3005 Grand Concourse, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

232106 B

FACILITY/APPLICANT:

New York Healthcare and Wellness

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. (AER)
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 (AER)
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. (HSP)
5. Submission of an executed loan commitment to the applicant acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment acceptable to the Department of Health. (BFA)

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **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 **December 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
[HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 232133-B
Namo Health Inc**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** October 26, 2023

Executive Summary

Description

Namo Health, Inc., a New York State nonprofit corporation, requests approval to establish and construct an Article 28 Diagnostic Treatment Center (D&TC) in leased space of a two-story office building basement at 651 Academy Street (New York County). The site will include thirteen exam rooms and the requisite support areas. The new D&TC will provide Primary Medical Care and Other Medical Specialties, including infectious disease, gastroenterology, pulmonology, endocrinology, cardiology, ophthalmology, urology, and physical therapy.

The project is a conversion of a private practice known as Sheldon Medical Services under the direction of Sangita Shah, M.D., a board member of Namo Health, Inc. Upon approval of this application, the D&TC will be known as Namo Health, Inc. Tushar Shah, M.D., who is board-certified in Internal Medicine, will serve as the Medical Director.

The applicant has entered into a Transfer and Affiliation Agreement for backup and emergency services with St. Barnabas Hospital, located 3 miles (8 minutes travel time) from the Center.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 12,502 visits in Year One and 32,500 in Year Three. The projected payor mix is 65% Medicaid and 2% Charity Care in Year One and Year Three.

Program Summary

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

Financial Summary

Total project costs of \$785,999 will be met with equity from Sangita Shah, M.D.

Budget:	<u>Year One</u> 2025	<u>Year Three</u> 2027
Revenues	\$2,210,512	\$5,856,164
Expenses:	<u>1,860,747</u>	<u>\$3,029,526</u>
Gain/(Loss)	\$349,765	\$2,826,638

Health Equity Impact Assessment

This project does not require a Health Equity Impact Assessment as it does not meet the requirements under Public Health Law Section 2802-B.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **December 15, 2024**, 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 15, 2024**, and construction must be completed by **September 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

The primary service area for this project is the Washington Heights – Inwood section in New York County, specifically zip code 10034. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Dental Health, and Mental Health and is also a Medically Underserved Area/Population (MUA/P). The population of New York County is estimated to increase to 1,720,649 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 3.1%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Zip Code 10034	New York County	New York State
Total Population – 2021 Estimate	43,365	1,669,127	20,114,745
Hispanic or Latino (of any race)	71.0%	25.6%	19.2%
White (non-Hispanic)	18.4%	46.7%	54.7%
Black or African American (non-Hispanic)	5.2%	12.1%	13.9%
Asian (non-Hispanic)	2.7%	11.8%	8.6%
Other (non-Hispanic)	2.7%	3.8%	3.6%

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

In 2021, 95.3% of the population of New York County had health coverage as follows:

Employee plans	52.7%
Medicaid	19.5%
Medicare	10.3%
Non-group plans	12.4%
Military or VA plans	0.329%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	13%	13%
Medicare	20%	20%
Medicaid	65%	65%
Private Pay	0%	0%
Charity Care	2%	2%
Other	0%	0%

The existing private practice to be replaced currently provides primary medical care and physical therapy services as well as referrals to other specialists. According to the applicant, primary care visits will be reduced from 17,049 before the conversion to 12,502 during the first year, growing to 32,500 by Year Three. They state the implementation of an Article 28 and seeking FQHC status will see an overall increase in utilization and services. Their services will also be enhanced during the first year with further services being added after Year Three.

The applicant will accept all patients regardless of the ability to pay and in no circumstance will a patient be refused treatment. All services will be offered to those in need of care who satisfy admission requirements, regardless of age, sex, sexual orientation, race, creed, religion, disability, source of payment, or any other personal characteristic.

The applicant has an existing Affiliation and Transfer Agreement with St. Barnabas Hospital for back-up hospital services located 3 miles and 8 minutes travel time away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

Hospital Admissions per 100,000 Adults			
PQI Name	Zip Code 10034	New York County	New York State
Chronic Obstructive Pulmonary Disease or Asthma	152	191	244
Hypertension	52	55	63
Heart Failure	193	244	336
Bacterial Pneumonia	48	57	105
Uncontrolled Diabetes	29	35	45
Prevention Quality Overall Composite	544	729	994

Conclusion

Approval of this project will allow for expanded access to Medical Services - Primary Care, Medical Services - Other Medical Specialties and Therapy - Physical O/P for the residents of New York County.

Program Analysis

Project Proposal

Namo Health, Inc., a not-for-profit entity, seeks approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 651 Academy Street, New York, NY 10034. The proposed D&TC will provide Medical Services-Primary Care, Therapy – physical O/P, and Medical Services- Other Medical Specialties including Infectious Disease, Gastroenterology, Pulmonology, Endocrinology, Cardiology, Ophthalmology, and Urology.

Proposed Operator	Namo Health Inc.
To Be Known As	Namo Health Inc.
Site Address	651 Academy Street New York, NY 10034 (New York County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Gastroenterology Pulmonology Endocrinology Cardiology Ophthalmology Urology Therapy – Physical O/P
Hours of Operation	Monday through Friday 8 am to 6 pm If needed will expand to Saturday 8:30 am to 6 pm
Staffing (1st Year / 3rd Year)	10.75 FTEs / 15.75 FTEs
Medical Director(s)	Tushar Shah, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	To be provided by St. Barnabas Hospital 3 miles / 8 minutes away

Staffing based on operations of existing Article 28 D&TCs and review of existing AHCF-1s.

Character and Competence

The members of Namu Health, Inc. are:

Board Members:
Sangita Shah, MD, President and Board Member
Steven Santana, Chairperson and Board Member
Issac Kuzi, Board Member
Remesh Sareuta, Board Member
Casilda Del Rosasrio Alvarado, Board Member

Dr. Tushar Shah is the proposed Medical Director. Dr. Shah has practiced at Sheldon Medical Care in NY since 2004. Dr. Shah graduated from BJ Medical College in India in 1989, completed their residency in Internal Medicine at Catholic Medical Center of Brooklyn in 1996, and is board-certified in Internal Medicine. Currently licensed in New York and Florida.

Casilda Del Rosario Alvarado is a proposed board member. Casilda has been retired since 2012. Casilda states she is a community leader. She is also a patient of Dr. Shah's.

Isaac Kuzi is a proposed board member. Isaac has experience as the founder and CEO of Krismark Foods Inc. and Krismark Cosmetics USA, Inc.

Steve Santana is a proposed board member. Steven states he is a non-patient board member for 2 years at Morris Heights Health Center and will provide leadership to grow the organization. He also worked with government officials and community leaders with roles as Secretary of Police Precinct Counsel of 46th in the Bronx and District Leader in the 86th Assembly District.

Ramesh Sareuta has been retired for the last ten years. She is a proposed board member. She was a manager of a radiology facility (Mosholu Park Radiology-Bronx NY) for 30+ years. She holds an M.B.B.S., obtained in 1974, from Dow Medical College in Pakistan.

Dr. Sangita Shah is the proposed Owner. Currently working as a primary care physician at Sheldon Medical Care in the Bronx since 2004. Dr. Shah also has experience working as an ER physician at St. Anthony Community Hospital in Warwick, NY. Obtained a medical degree in India at Gujarat University and became a board-certified internal medicine physician in 1995.

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 disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$785,999, broken down as follows:

Renovation & Demolition	\$564,075
Design Contingency	28,204
Construction Contingency	42,306
Architect/Engineering Fees	45,126
Other Fees	50,000
Movable Equipment	50,000
CON Application Fee	2,000
CON Processing Fee	<u>4,288</u>
Total Project Cost	\$785,999

The applicant's financing plan appears as follows:

Applicant Cash Equity	\$785,999
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BFA Attachment A presents the members' net worth, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted first and third-year operating budgets in 2025 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$240.00	\$120,000	\$240.00	\$312,000
Medicaid-MC	\$230.00	1,753,750	\$234.60	4,650,945
Medicare-FFS	\$105.00	157,500	\$107.10	417,690
Medicare-MC	\$135.00	135,000	\$137.70	358,020
Commercial-FFS	\$55.00	68,750	\$56.10	182,325
Commercial-MC	\$55.00	20,625	\$56.10	54,698
Bad Debt		<u>-45,113</u>		<u>-119,514</u>
Total		\$2,210,512		\$5,856,164
Expenses:				
Operating	\$118.82	\$1,485,515	\$81.07	\$2,634,877
Capital	<u>\$30.01</u>	<u>375,232</u>	<u>\$12.14</u>	<u>394,649</u>
Total	\$148.83	\$1,860,747	\$93.21	\$3,029,526
Net Income		\$349,765		\$2,826,638
Total Visits		12,502		32,500

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	500	4.0%	1,300	4.0%
Medicaid-MC	7,625	61.0%	19,825	61.0%
Medicare-FFS	1,500	12.0%	3,900	12.0%
Medicare-MC	1,000	8.0%	2,600	8.0%
Commercial-FFS	1,250	10.0%	3,250	10.0%
Commercial-MC	375	3.0%	975	3.0%
Charity	<u>252</u>	<u>2.0%</u>	<u>650</u>	<u>2.0%</u>
Total	12,502	100%	32,500	100%

The following is noted concerning the submitted budget:

- Rate and revenue projections are based on the Freestanding APG Base Rates using full APG investment and the Medicare Part B fee schedule.
- Expenses are based on a review of cost reports for other Article 28 D&TC in the same service area, including staffing ratios and input from the proposed Medical Director.
- The applicant expects that upon converting its private practice to an Article 28 D&TC, some medical providers will opt out of continuing their clinical participation. As a result, the primary care visits will be reduced from 17,049 before the conversion to 12,502 during the first year. Namo Health Center will target the developmental disability screening needs of children, seropositive persons, elder care needs, and linguistically isolated populations. It is anticipated that with the implementation of Article 28, seeking FQHC status, utilization, and services will see an overall increase.

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site, the terms of which are summarized below:

Date:	September 16, 2022
Premises:	4,905 square feet located at 651 Academy Street, NY, NY 10034
Landlord:	651 Inwood Realty Corp.
Lessee:	Namo Health, Inc.
Term:	January 1, 2013 – December 31, 2027, three (3) five (5) year renewals
Payment:	Rent as of October 1, 2024, is \$328,390 per year. Rent increases by 3% per year, and at the start of each renewal period, it increases by 5% and then 3% per year (\$66.95 per sq. ft.)
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as Sangita Shah, M.D., is the sole shareholder of the landlord and a Board Member of the tenant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

Capability and Feasibility

Total project costs of \$785,999 will be met with equity from Sangita Shah, M.D. Working capital requirements are estimated at \$504,921, based on two months of third-year expenses funded with equity from Sangita Shah, M.D. The review of BFA Attachment A reveals sufficient resources to meet all the equity requirements.

BFA Attachment B presents Namo Health, Inc.'s Pro Forma Balance Sheet that shows operations will start with \$1,290,920 in equity as of the first day of operation. The Center projects an operating surplus of \$349,765 and \$2,826,638 in the first and third years. The applicant's budgets appear to be reasonable.

Conclusion

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

Attachments

BFHP	Map
BFA Attachment A	Net Worth Statements of Members of Namo Health, Inc.
BFA Attachment B	Pro Forma Balance Sheet of Namo Health, Inc.
BFA Attachment C	Namo Health, Inc., Board Members

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center by converting a private practice at 651 Academy Street, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

232133 B

FACILITY/APPLICANT:

Namo Health Inc

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **December 15, 2024**, 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 15, 2024**, and construction must be completed by **September 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 202035-E
Hilaire Care Network LLC d/b/a
Pine Forest Center for Rehabilitation and Healthcare

Program: Residential Health Care Facility
Purpose: Establishment

County: Suffolk
Acknowledged: August 19, 2020

Executive Summary

Description

Hilaire Care Network, LLC d/b/a Pine Forest Center for Rehabilitation and Healthcare, a New York limited liability company, requests approval to be established as the new operator of Hilaire Rehabilitation & Nursing, a 76-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) at 9 Hilaire Drive, Huntington, NY (Suffolk County). The facility is currently operated by Hilaire Farm Skilled Living & Rehabilitation Center, LLC (Hilaire Farm).

On May 30, 2018, Skillaire, LLC and Hilaire Holdings, LLC, entered into a Real Estate Purchase Agreement (REPA), wherein Hilaire Holdings, LLC agreed to purchase three parcels of land, 9 Hilaire Drive (the current location of Hilaire Rehabilitation & Nursing), and 11 and 13 Hilaire Drive, parcels contiguous to the current facility location. The closing on the property purchase occurred in April 2019. After the change of ownership approval proposed in this application and under a future Certificate of Need (CON) application, Hilaire Care Network, LLC plans to construct a new facility on one of the contiguous parcels once approved.

Also, on May 30, 2018, Hilaire Farm Skilled Living and Rehabilitation Center, LLC entered into an Asset Purchase Agreement (APA) with Hilaire Care Network, LLC for the sale and acquisition of the operating interests of the RHCF. On August 31, 2023, the current owners of Hilaire Care Network, LLC entered into an assignment of membership interest agreement for the full transfer of ownership in Hilaire Care Network, LLC to the new applicant. The Hilaire

Care Network, LLC will lease the premises from Hilaire Holdings, LLC.

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

<u>Current Operator</u>	
Hilaire Farm Skilled Living & Rehabilitation Center, LLC	
<u>Members:</u>	<u>%</u>
Robert Heppenheimer	33.34%
Anupadevi Lamba	33.33%
Dr. Smita Lodha	33.33%

<u>Proposed Operator</u>	
Hilaire Care Network, LLC	
<u>Member</u>	<u>%</u>
Elimelich Greenfield	100%

OALTC Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of December 6, 2023, was 97.4% for the facility and 87.1% for Suffolk County.

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

Financial Summary

Hilaire Care Network, LLC will acquire the RHC operating assets for \$1,500,000, funded by a loan of \$1,500,000 at 6% interest for a two-year term.

<u>Budget:</u>	<u>Current</u>	<u>Year</u>	<u>Year</u>
	<u>Year</u>	<u>One</u>	<u>Three</u>
Revenues	\$11,355,213	\$10,579,708	\$10,579,708
Expenses	<u>\$12,431,325</u>	<u>\$9,791,561</u>	<u>\$9,791,561</u>
Net Income/ (Loss)	(\$1,076,112)	\$788,147	\$788,147

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under New York State Public Health Law §2802-B, as it was received by the Department on July 24, 2020.

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
2. Submission of an executed loan document acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of an amended and executed Certificate of Assumed Name of Hilaire Care Network, LLC, acceptable to the Department. [CSL]
6. Submission of an executed Certificate of Amendment of the Articles of Organization of Hilaire Care Network, LLC, acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement of Hilaire Care Network, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 8, 2024

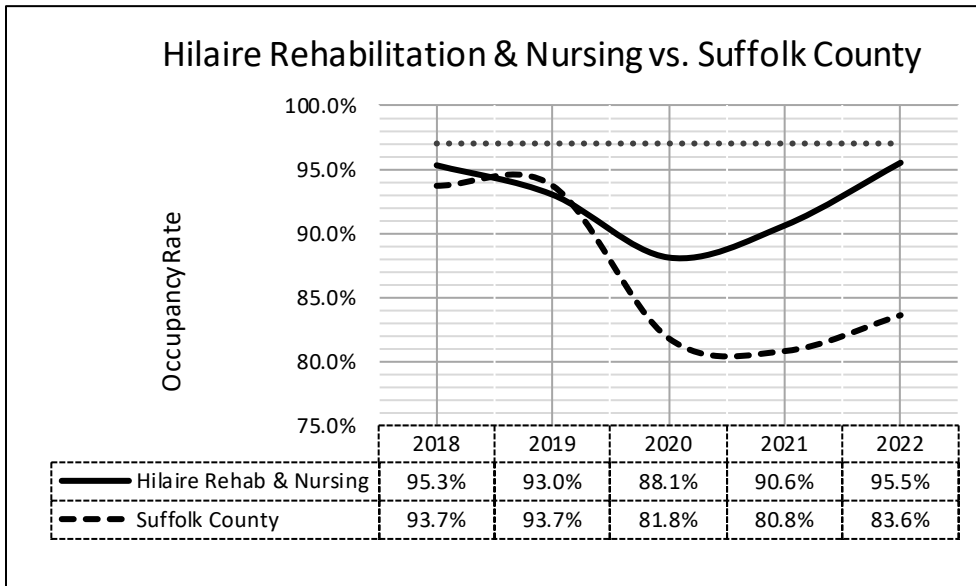
Need Analysis

Background and Analysis

The primary service area is Suffolk County, which has a population projected to decrease to 1,492,157 by 2028, based on the Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Suffolk County	New York State
Total Population (2021 Estimate)	1,522,998	20,114,745
Hispanic or Latino (of any race)	19.9%	19.2%
White (non-Hispanic)	66.4%	54.7%
Black or African American (non-Hispanic)	6.9%	13.9%
Asian (non-Hispanic)	4.0%	8.6%
Other (non-Hispanic)	2.7%	3.6%

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



Occupancy rates shown through 2022 have been calculated from the RHCF-4 cost reports.

As of December 6, 2023, occupancy was 97.4% for the facility and 87.1% for Suffolk County.

The 2020 occupancy was significantly impacted by COVID-19. The applicant is developing plans for after the change in ownership to replace the current facility due to its physical plant shortcomings and a CON application will be submitted in the future. In the interim, the facility's utilization has returned to its previous levels since the impact of the pandemic has diminished.

The table below shows the CMS Rating and the utilization of the closest RHCFS to Hilaire Rehabilitation and Nursing.

Facility Name	CMS Overall Rating	Beds	Distance from other RHCFS Miles/Time	Occupancy			
	As of 12/2023			2019	2020	2021	2022
Hilaire Rehabilitation & Nursing	1	76	0 miles/0 mins	93.0%	88.1%	90.6%	95.5%
Carillon Nursing	5	315	1.8 miles/6 mins	89.9%	75.1%	72.0%	70.4%
Apex Rehab	4	195	3.4 miles/11 mins	94.4%	79.2%	92.6%	96.2%
White Oaks (Nassau)	4	200	5.5 miles/14 mins	93.4%	71.1%	73.3%	85.5%
Cold Springs (Nassau)	2	564	5.3 miles/13 mins	95.1%	80.0%	76.6%	83.7%
Excel @ Woodbury (Nassau)	4	123	5.5 miles/13 mins	90.7%	76.9%	82.8%	85.8%
Huntington Hills Center	5	320	6.6 miles/20 mins	94.8%	80.6%	84.6%	91.5%

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

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Hilaire Rehabilitation & Nursing	1.278	1.211	1.4645	1.5144	1.4635	1.468
Carillon Nursing	1.406	1.299	1.4194	1.3707	1.4169	1.3296
Apex Rehab	1.401	1.27	1.4454	1.3653	1.4721	1.4066
White Oaks (Nassau)	1.273	1.118	1.4965	1.4365	1.6545	1.7619
Cold Springs (Nassau)	1.24	1.172	1.2745	1.2013	1.2729	1.1966
Excel @ Woodbury (Nassau)	1.385	0.985	1.552	1.1073	1.5746	1.1135
Huntington Hills Center	1.286	1.155	1.2909	1.1759	1.3688	1.3057

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 is 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 is 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 has been above the threshold of 75% of the Suffolk County rate.

Medicaid Access	2020	2021	2022
Suffolk County Total	20.6%	24.3%	23.1%
Suffolk Threshold Value	15.4%	18.3%	17.3%
Hilaire Rehabilitation & Nursing	35.6%	35.4%	36.0%

Conclusion

There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy, as of December 6, 2023, was 97.4% for the facility and 87.1% for Suffolk County.

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	Hilaire Rehabilitation & Nursing	Pine Forest Center for Rehabilitation and Healthcare
Address	9 Hilaire Drive Huntington, NY 11743	Same
RHCF Capacity	76 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Hilaire Farm Skilled Living & Rehabilitation Center, LLC <u>Membership:</u> Robert Heppenheimer 33.3% Anupadevi Lamba 33.3% Dr. Smita Lodha 33.3%	Hilaire Care Network LLC <u>Membership:</u> Elimelich Greenfield 100%

Character and Competence

Elimelich Greenfield discloses current employment as the Administrator of Apex Rehabilitation and Care Center, a skilled nursing facility in Huntington, NY. Previously, Elimelich was the Administrator of Hilaire Rehabilitation & Nursing, the Assistant Administrator of Meadow Park Rehabilitation and Healthcare Center, the Director of staffing at Zenith Care Health Group, and the Staffing Coordinator at Centers Health Care Healthcare Bushwick Center. Elimelich holds a bachelor's degree in business administration from Post University, is licensed as a nursing home administrator in New York, and discloses no health facility ownership interests.

Quality Review

The proposed owner 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					
		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
Elimelich Greenfield	0	N/A	N/A	N/A	N/A

*Duration of Ownership as of 02/8/2024

Data date: 11/2023

A review was conducted to ensure that the applicant had adequate relevant experience. Elimelich Greenfield has over five years of experience as a Nursing Home Administrator at Hilaire Rehabilitation & Nursing from October 2018 to February 2023 and Apex Rehabilitation and Care Center from March 2023 to the present. A review of the operations of Hilaire Rehabilitation & Nursing and Apex Rehabilitation and Care Center while Elimelich Greenfield was the administrator revealed no enforcements.

Facility	Administrator Since*	Overall	Health Inspection	Quality Measures	Staffing
New York					
Apex Rehabilitation and Care Center	Current	****	****	***	**
	03/2023	****	****	****	**
End Dated as Administrator					
Hilaire Rehabilitation & Nursing	02/2023	*	*	****	**
	10/2018	*	**	****	*

* Note that Elimelich Greenfield was not the operator of the above facilities, but rather he was serving as the administrator.

Data date: 11/2023

Conclusion

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

Financial Analysis

Operating Budget

The applicant provided the current year (2022) budget and their operating budget, in 2024 dollars, for the first (2024) and third year (2026) of operation after the change in ownership. The budget is summarized below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Comm. FFS	\$402.95	\$1,538,063	\$315.16	\$1,013,548	\$315.16	\$1,013,548
Medicaid FFS	\$315.07	\$4,889,547	\$263.25	\$3,550,155	\$263.25	\$3,550,155
Medicaid MC	\$414.37	\$123,067	\$268.23	\$786,179	\$268.23	\$786,179
Medicare FFS	\$799.64	\$4,142,955	\$806.67	\$4,401,173	\$806.67	\$4,401,173
Medicare MC	\$394.15	\$299,950	\$498.95	\$406,641	\$498.95	\$406,641
Private Pay	\$370.81	\$343,371	\$262.92	\$118,053	\$262.92	\$118,053
All Other		<u>\$18,260</u>		<u>\$303,959</u>		<u>\$303,959</u>
Total Revenue		\$11,355,213		\$10,579,708		\$10,579,708
<u>Expenses</u>						
Operating	\$424.74	\$11,255,979	\$337.14	\$8,884,692	\$337.14	\$8,884,692
Capital	<u>\$44.35</u>	<u>\$1,175,346</u>	<u>\$39.70</u>	<u>\$906,869</u>	<u>\$34.41</u>	<u>\$906,869</u>
Total	\$469.09	\$12,431,325	\$376.84	\$9,791,561	\$371.55	\$9,791,561
Net Income(Loss)		<u>(\$1,076,112)</u>		<u>\$788,147</u>		<u>\$788,147</u>
Patient Days		<u>26,501</u>		<u>26,353</u>		<u>26,353</u>
Occupancy		95.53%		95.00%		95.00%

The following is noted concerning the submitted RHCF operating budget:

- Medicaid revenue is based on the facility's 2022 Medicaid rate adjusted for current facility-specific CMI.
- The Medicare and private pay rates are the actual daily 2022 rates experienced by the facility.
- Expense assumptions are based on the current experience of the facility in 2022, adjusted to the projected census in Years One and Three. Lease rental expense per the executed lease has been included. The over \$2 million drop in the operating expenses from the Current Year to Years One and Three is due to the facility transferring the physical therapy program from a contracted service to an in-house service.

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

<u>Payor</u>	<u>Current Year</u>		<u>Years One and Three</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Comm. FFS	3,817	14.40%	3,216	12.20%
Medicare FFS	5,181	19.55%	5,456	20.70%
Medicare MC	761	2.87%	815	3.09%
Medicaid FFS	15,519	58.56%	13,486	51.17%
Medicaid MC	297	1.12%	2,931	11.12%
Private Pay	<u>926</u>	<u>3.50%</u>	<u>449</u>	<u>1.72%</u>
Total	26,501	100.00%	26,353	100.00%

- The breakeven utilization is projected at 88.61% or 24,580 patient days for Year One and 87.71% or 24,332 patient days for Year Three.
- The facility had Medicaid admissions of 35.6% in 2020, 35.4% in 2021, and 36% in 2022. The 75% Medicaid admissions threshold for Suffolk County was 15.4% in 2020, 18.3% in 2021, and 17.3% in 2022. All the Medicaid admission rates are above the county's 75% threshold.

Asset Purchase Agreement

The applicant submitted an executed asset purchase agreement to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below.

Date:	May 30, 2018
Seller:	Hilaire Farm Skilled Living & Rehabilitation Center, LLC
Purchaser:	Hilaire Care Network, LLC d/b/a Pine Forest Center for Rehabilitation and Healthcare
Assets Transferred:	All rights, title, and interest in the business assets lien free, the business and operation of the facility. The assets include leases, inventory, supplies, and other articles of personal property, all assumed contracts, resident funds held in trust, trade names, logos, trademarks and service marks, all security deposits and prepayments for future services, all menus, policies and procedures manuals and computer software, telephone numbers, telefax numbers and domain names, copies financial books and records relating to the facility, all resident/patient records, all employees payroll records, Seller's Medicare and Medicaid provider numbers, goodwill will and licenses and permits.
Excluded Assets:	Pre-closing accounts receivables: retroactive rate increases for services prior to closing date, securities, refunds and settlements prior to closing, and assets in 401 (k) and deferred compensation plans.
Assumed Liabilities:	Those occurring after the closing date.
Purchase Price:	\$1,500,000
Payment:	\$500,000 promissory note and \$1,000,000 wire transfer two business days prior to closing.

The purchase price will be satisfied as follows:

Loan for \$1,500,000 at 6% for a 2-year term	<u>\$1,500,000</u>
Total	<u>\$1,500,000</u>

HHC Capital Advisory Group, LLC submitted a letter of Interest for the respective loan at the stated terms.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 12/14/2023, the facility has no outstanding Medicaid Liabilities.

Lease Agreement

A draft lease agreement was submitted for the RHCF real property. The terms are summarized below.

Date:	TBD
Premises:	76-bed RHCF located at 9 Hilaire Drive, Huntington, NY 11743
Owner/Landlord:	Hilaire Holding, LLC
Lessee:	Hilaire Care Network, LLC
Term:	For a period to end no later than December 31, 2035
Rent:	\$900,000 per year for year one with an annual 2% increase from year 2 going forward
Provisions:	Triple Net. Tenant responsible for taxes, insurance, maintenance & utilities.

The applicant submitted an affidavit indicating that the lease agreement will be an arm's length agreement, as there is no relationship between the landlord and the lessee. Letters from two New York licensed realtors have been provided attesting that the cost per square foot is at fair market value for the lease.

Assignment and Assumption Agreement

The Assignor entered into a Membership Interest Purchase Agreement as of August 31, 2023, with Zalmen Oberlander to purchase 50% of his ownership in Hilaire Care, Network, LLC, and Ari Silberstein to purchase his 50% ownership in Hilaire Care Network, LLC. The Assignor is passing this interest to the assignee. This will be effectuated in accordance with the terms of an Assignment and Assumption Agreement, as follows:

Date:	8/31/2023
Assignors	Ari Silberstein (50%) and Zalmen Oberlander (50%)
Assignee	Elimelich Greenfield (100%)
Assets	Right, title and interest in the asset purchase agreement
Liabilities Assumed	None
Consideration	\$10 per each 50% ownership. Payable on the effective date

Capability and Feasibility

The purchase price for the RHCF's operating interest is \$1,500,000 and will be funded with a \$1,500,000 loan with a 2-year term and a 6% interest rate. HHC Capital Advisory Group, LLC submitted a Letter of Interest for the respective loan at the stated terms. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,631,927, based on approximately two months of Year One expenses. The applicant will provide \$815,964 from the members' equity, with the remaining \$815,963 to be satisfied through a 2-year term loan at a 6% interest rate. HHC Capital Advisory Group, LLC provided a letter of interest for the respective loan at the stated terms. The members have sufficient liquid resources to meet the working capital equity requirements, as shown in BFA Attachment A.

The submitted budget projects a net income of \$788,147 in Year One (2024) and \$788,147 in Year Three (2026) after the change in ownership. The budget is reasonable.

The applicant has provided the Department with an affidavit stating they would fund any shortcomings in paying off both the purchase price loan and the working capital loan through both the cash surrender value of life insurance and the applicant's equity in real estate investment if net income from operations isn't sufficient to cover to costs.

BFA Attachment C presents Hilaire Care Network, LLC's Pro Forma Balance Sheet, which shows the entity will start with \$815,964 in members' equity.

BFA Attachment D presents the 2020-2022 Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC, and the Financial Summary for the period ending September 30, 2023. As shown, the RHCF had an average negative working capital position, an average negative net assets position, and an average net loss of (\$1,114,806) for the period. For the period ending September 30, 2023, the facility had a positive working capital position and a negative net asset position and generated a net income of \$793,564. The applicant states that the facility has been struggling with cash while the current operator has been focusing on the change of ownership. As a result, the facility is declining financially. With the experience of the proposed operator, as well as plans to replace the current facility due to physical plant shortcomings, a positive impact is projected for the facility's financial position.

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 A	Map
BFA Attachment A	Net Worth of Proposed Member of Hilaire Care Network, LLC
BFA Attachment B	Pre, Interim and Post Ownership of the RHCF
BFA Attachment C	Pro Forma Balance Sheet, Hilaire Care Network, LLC D/B/A Pine Forest Center for Rehabilitation and Healthcare
BFA Attachment D	2020-2022 Financial Summary and September 30, 2023 Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Hilaire Care Network LLC as the new operator of the 76-bed residential health care facility located at 9 Hilaire Drive, Huntington, currently operated as Hilaire Rehabilitation & Nursing, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

202035 E

FACILITY/APPLICANT:

Hilaire Care Network LLC d/b/a Pine Forest
Center for Rehabilitation and Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
2. Submission of an executed loan document acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of an amended and executed Certificate of Assumed Name of Hilaire Care Network, LLC, acceptable to the Department. [CSL]
6. Submission of an executed Certificate of Amendment of the Articles of Organization of Hilaire Care Network, LLC, acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement of Hilaire Care Network, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 222260-B
Oxford Nursing Home Inc. d/b/a
Oxford Rehabilitation and Nursing Facility

Program: Residential Health Care Facility **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** January 31, 2023

Executive Summary

Description

Oxford Nursing Home, Inc., a 235-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) at 144 South Oxford Street, Brooklyn (Kings County), requests approval to certify five additional RHCF beds, construct a 240-bed replacement facility at 2832 Linden Boulevard, Brooklyn, and transfer the Estate of Livia Goldberg’s 25.15% interest equally to her daughters Rochelle Braun, M.D. and Shulamith Goldberg, M.D.

The current facility is one of the oldest nursing homes in NYC, and its bed complement includes several multi-bedded “ward accommodation” rooms. The new facility will employ the neighborhood concept to serve the residents better and create an efficient building for staff and operations. The new building will consist of three levels above ground and a basement. The design will focus on the resident’s quality of life and have 24-bed housing wings, a central nursing station, and support functions.

Conover King Realty, LLC, an affiliate of Oxford Nursing Home, Inc., will be the real property owner of the replacement facility and will be responsible for the mortgage. Oxford Nursing Home, Inc. will enter into a 30-year lease agreement with Conover King Realty, LLC, for site control.

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

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Estate of Livia Goldberg	25.15%	0%
Rochelle Braun, M.D.	9.93%	22.505%
Shulamith Goldberg, M.D.	9.93%	22.505%
Barry Braunstein	45.01%	45.010%
Norman Motechin	<u>9.98%</u>	<u>9.980%</u>
Total	100%	100%

OALTC Recommendation
Contingent Approval

Need Summary

Based upon weekly census data, current occupancy, as of December 6, 2023, was 83.8% for the facility and 94.7% for Kings County.

Program Summary

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

Financial Summary

The total project cost for the replacement facility is \$84,946,640. Conover King Realty LLC will fund the project with equity of \$21,586,640 and a \$63,360,000 30-year mortgage at 6.125%. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$42,066,033	\$43,967,079
Expenses	<u>41,348,722</u>	<u>43,416,156</u>
Net Income	\$717,311	\$550,923

Health Equity Impact Assessment
There was no Health Equity Impact Assessment required for this project under New York State Public Health Law §2802-B, as it was received by the Department on December 21, 2022.

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 check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed real property loan commitment acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
6. 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]
7. Submission of a copy of the signed/executed Lease Agreement that is acceptable to The Department. [CSL]
8. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

Approval conditional upon:

1. This project must be completed by **October 15, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2024**, and construction must be completed by **July 15, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The operator shall submit a plan for the transition and relocation of residents to the Metropolitan Area Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]

Council Action Date

February 8, 2024

Need Analysis

Background and Analysis

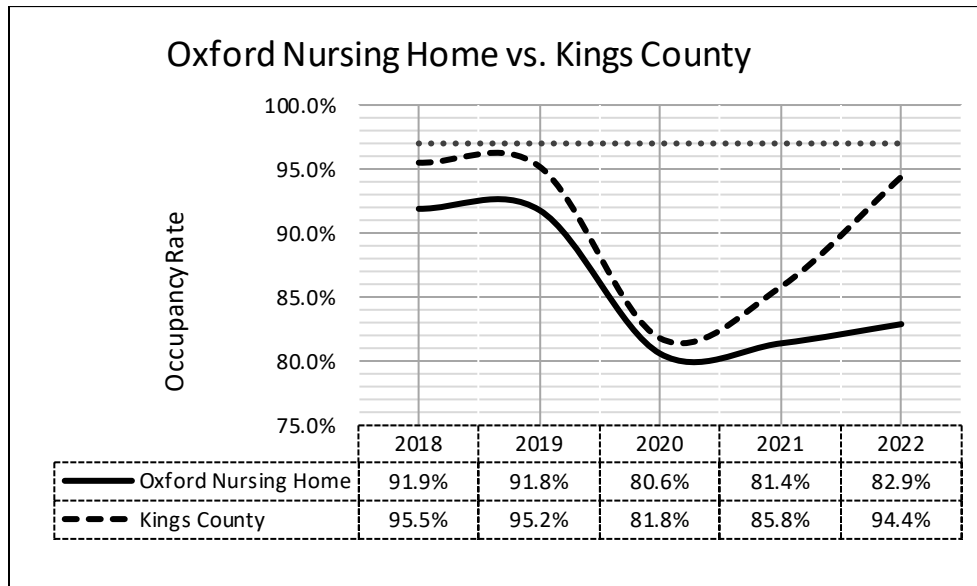
Oxford Nursing Home is requesting approval to relocate the facility from 144 South Oxford Street, Brooklyn, to 2832 Linden Boulevard, Brooklyn, 11208, in Kings County, add five RHCf beds to the facility, and transfer 25.15% ownership interest from one deceased member to two existing members.

Bed Type	Bed Capacity	Proposed Action	Upon Completion
RHCf	235	+5	240
Vent	0	0	0
Total	235	5	240

The primary service area is Kings County, which has a population projected to increase to 2,844,643 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	Kings County	New York State
Total Population (2021 Estimate)	2,712,360	20,114,745
Hispanic or Latino (of any race)	18.8%	19.2%
White (non-Hispanic)	36.7%	54.7%
Black or African American (non-Hispanic)	28.6%	13.9%
Asian (non-Hispanic)	11.7%	8.6%
Other (non-Hispanic)	4.1%	3.6%

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



Occupancy rates shown through 2022 have been calculated from the RHCf-4 cost reports.

As of December 6, 2023, occupancy was 83.8% for the facility and 94.7% for Kings County.

The table below shows the CMS Rating and the utilization of the closest RCHFs to the proposed location of Oxford Nursing Home in New York State. Oxford Nursing Home is one of the oldest nursing homes in the city of New York and this project represents the operator's intent to modernize the facility. All surrounding facilities have strong occupancy rates for 2022.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCs	Occupancy			
	As of 12/2023			Miles/Time	2019	2020	2021
Oxford Nursing	1	235	0 miles/0 mins	91.8%	80.6%	81.4%	82.9%
Brooklyn-Queens NH	1	140	0.5 miles/3 mins	88.8%	88.9%	96.0%	97.9%
Linden Ctr.	4	280	1.6 miles/8 mins	98.0%	89.5%	90.4%	97.5%
Bushwick Ctr.	3	225	2.9 miles/15 mins	97.9%	97.5%	96.5%	96.4%
Spring Creek	2	188	2.9 miles/13 mins	98.0%	84.4%	90.6%	96.7%
Atrium Ctr.	3	380	2.9 miles/15 mins	96.9%	85.9%	89.5%	98.0%
Four Seasons	2	250	3.3 miles/14 mins	96.2%	78.7%	80.9%	95.3%

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

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Oxford Nursing Home	1.671	1.738	1.6856	1.8013	1.6534	1.8323
Brooklyn-Queens NH	1.798	1.806	1.8739	2.0501	1.9015	2.0458
Linden Ctr	1.396	1.289	1.5566	1.5912	1.5232	1.5724
Bushwick Ctr	1.437	1.481	1.3921	1.4941	1.4647	1.5788
Spring Creek	1.475	1.532	1.5925	1.529	1.4477	1.4362
Atrium Ctr	1.327	1.447	1.5327	1.3936	1.5973	1.5192
Four Seasons	1.427	1.317	1.4882	1.3873	1.449	1.4188

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 is 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 is 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 Kings County rate for the years 2020 through 2022.

Medicaid Access	2020	2021	2022
Kings County Total	38.9%	45.1%	32.6%
Kings Threshold	29.1%	33.8%	24.4%
Oxford Nursing Home	90.0%	92.3%	91.7%

Conclusion

The applicant is requesting approval to add five RHCF beds to the facility and relocate the facility. Based upon weekly census data, current occupancy, as of December 6, 2023, was 83.8% for the facility and 94.7% for Kings County.

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	Oxford Nursing Home	Same
Address	144 South Oxford Street Brooklyn, NY 11217	2832 Linden Boulevard Brooklyn, NY 11208
RHCF Capacity	235 beds	240 beds
ADHCP Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	Business Corporation	Same
Operator	Oxford Nursing Home Inc. <u>Membership:</u> Barry Braunstein 45.01% Estate of Livia Goldberg 25.15% Norman Motechin 9.98% Dr. Rochelle Braun 9.93% Dr. Shulamith Goldberg 9.93%	Oxford Nursing Home Inc. <u>Membership:</u> Barry Braunstein 45.01% Norman Motechin 9.98% Dr. Rochelle Braun 22.505% Dr. Shulamith Goldberg 22.505%

Character and Competence

Dr. Rochelle Braun discloses employment in general pediatrics as a Locum Tenens Pediatrician with Dr. Chana Gelbfish in Brooklyn, NY. Dr. Braun has a medical degree from SUNY Downstate Medical School and is licensed to practice in New York and New Jersey. Dr. Braun discloses the following health facility ownership interests:

Nursing Homes

Oxford Nursing Home (NY) (9.93%)

01/1994 to Present

Dr. Shulamith Goldberg is currently a homemaker and investor. Dr. Goldberg has a medical degree from SUNY Downstate Medical School and is licensed to practice in New York. Dr. Goldberg discloses the following health facility ownership interests:

Nursing Homes

Oxford Nursing Home (NY) (9.93%)

01/1994 to Present

Quality Review

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

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
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
Dr. Rochelle Braun	1	0	N/A	1	100%
Dr. Shulamith Goldberg	1	0	N/A	1	100%

* Duration of Ownership as of 02/8/2024

Data date: 11/2023

New York. The proposed owner’s portfolio includes ownership in one New York facility. The New York facility has a CMS overall quality rating of much below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings for Oxford Nursing Home, the applicant indicated the following:

The building housing the present Oxford Nursing Home is over 100 years old. It has been in use as a nursing home since the 1950s. The original use was as an Elk’s Club. Nursing home standards were very different in the pre-Medicare/Medicaid days. There are ward accommodations and other features that are unacceptable by today’s standards. In fact, in a citywide assessment of nursing homes performed by the Health Systems Agency of New York City (“HSA”) in 1983, Oxford Nursing Home was described as “not part of the long-term care resource” of skilled nursing facilities. In other words, forty years ago, the HSA determined that the facility should close due to its age and outmoded physical environment. Nonetheless, Oxford, even with its physical limitations, continued to serve its patients and serve them well, as may be seen from the reports of the Medicare/Medicaid surveys performed by the Department of Health. Given the age of the building and the fact that the existing facility is outmoded, it is not surprising that the facility receives low ratings on the Medicare 5-star system. The operators of the facility understand the existing Oxford Nursing Home should be replaced and have been pursuing this application and its predecessors since 2003.

The plan for improvement in the 5-star system rating is the replacement of the existing outmoded Oxford. Approval of this application will result in a rapid improvement of living conditions for Oxford’s current and future residents. Like many other healthcare facilities, Oxford is dealing with the staffing challenges brought on and exacerbated by the pandemic. Oxford has raised its wages, has offered sign-on bonuses, as well as, retention bonuses, and has slowly increased its hiring and overall hours per patient.

As stated previously, Oxford’s physical plant presents unique challenges. None of the citations on Oxford’s last survey rose to the level of “harm,” and many were associated with the physical environment. While Oxford is somewhat limited in what it can do in such an old building, it has spent significant sums of money in the past year improving the home-like environment. For example, Oxford has upgraded the lights and furniture and hired an interior decorator to improve the environment with artwork. An example of Oxford’s quality of care is that it has had multiple infection control surveys since COVID-19 and has received no deficiencies in this area.

Facility	Ownership Since	Overall	Health Inspection	Quality* Measure	Staffing
New York					
	Current	*	*	*	**
Oxford Nursing Home	01/1994 (ratings started 1/2009)	****	****	*****	*

* Current data on Quality Measure couldn’t be verified through an audit.

Data date: 11/2023

Enforcement History

New York

A review of the operations of Oxford Nursing Home for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-21-174 issued on July 13, 2021, for surveillance findings on February 24, 2021. The facility failed to establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

Physical Environment

The proposed layout of the Oxford Nursing Home Inc. is a three-story facility with a neighborhood concept. The floor plan consists of a half basement, a central core, two wings on the ground floor, and a core with four wings on the second and third floors. Resident rooms line the exterior walls of the wings with decentralized communal and support space.

The basement is half the size of the upper facility floors and is used for resident support facilities, staff support, and parking. The resident support space features the central kitchen, laundry room, maintenance, housekeeping storage, and trash room. The staff support service space provides access to three staff locker rooms and an adjacent staff lounge. The parking garage provides covered parking for 23 cars and an additional space for bicycles.

The first floor of the facility is differentiated into a south side and a north side, with the facility's primary entrance located in between. The south side of the first floor features a central administrative suite and staff offices, a therapy department with a full ADL suite, central residential communal and activity spaces, and a facility support area with a receiving dock. The north side of the first floor is composed of two residential wings with 24 beds each. The two wings utilize a neighborhood layout, with each neighborhood having its own day rooms, nourishment area, bathing facilities, and nurse station. The main dining room and outdoor patio areas are located centrally between the two wings.

The second and third floors have similar floorplans, which utilize a neighborhood layout. The floors are organized into four neighborhoods consisting of 24 beds in each neighborhood. Each floor has 96 total beds, composed of 42 double rooms and 12 single rooms. Each neighborhood has its day rooms, bathing facilities, and a decentralized nurse station. Centrally located on the second and third floor is a large nurse station, main resident dining room, nourishment area, and decentralized resident communal and activity spaces.

Food service will be provided on hot and cold carts from the central kitchen to the residential floors. The central dining rooms on each floor feature a full-service pantry with steam tables, refrigerators, freezers, an ice maker, and a beverage center for meal service. The large central dining rooms and small group dining areas located in the resident units provide ample seating for mealtimes.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total construction cost for the new 240-bed facility is projected to be \$84,946,640, broken down as follows:

Land/Building Acquisition	\$11,300,000
New Construction	51,601,600
Design Contingency	5,160,160
Construction Contingency	2,580,080
Architect/Engineering Fees	4,128,128
Construction Manager Fees	1,032,032
Other Fees	800,000
Movable Equipment	2,400,000
Financing Costs	2,217,600
Interim Interest Expense	3,260,400
Application Fees	2,000
Additional Processing Fees	<u>464,640</u>
Total Project Cost	\$84,946,640

The Bureau of Architectural and Engineering Review has determined that the cost per bed meets the applicable RHCF bed cap limitation for new construction.

Conover King Realty LLC (property owner/landlord) will fund the total project cost with equity of \$21,586,640 (\$10,286,640 from liquid resources borrowed from a related company, Oxford Nursing Home, Inc., and land of \$11,300,000 (previously appraised at contributed value) plus a loan of \$63,360,000.

Financing for the project is anticipated as follows:

Landlord Equity - Land owned, previously appraised at contributed value.	\$11,300,000
Landlord Equity (as noted, proceeds loaned from related entity's accumulated funds - Oxford Nursing Home, Inc)	10,286,640
Landlord mortgage (6.125% over a 30-year term)	<u>63,360,000</u>
Total Funds	\$84,946,640

Oxford Nursing Home, Inc., a related entity, has provided a letter of interest for the \$10,286,640. The interest rate will be 2.1% unless the Internal Revenue Service's minimum permissible interest rate is lower. The term is five years, interest-only, with a balloon payment. A review of BFA Attachment D, Oxford Nursing Home, Inc.'s 2022 Certified Financial Statements, shows that the facility has sufficient resources to meet the loan commitment. If, for any reason, Oxford Nursing Home, Inc. is short to cover the loan commitment, then stockholders Barry Braunstein and Norman Motechin have submitted affidavits to cover any shortfall. BFA Attachment A-1 shows their net worth. BFA Attachment A-2 shows the net worth of Conover King Realty, LLC members. It was stated that members of Conover King have sufficient assets to fund their portion of the balloon payment to Oxford Nursing Home with cash or place a mortgage on real property they own, which was attested via affidavits. Newpoint Real Estate Capital has provided a letter of interest to Conover King Realty, LLC, for the financing.

Operating Budget

The applicant has submitted their 2022 operations and an operating budget, in 2025 dollars, for the first and third years of operation after occupancy in the replacement facility. The budget is summarized as follows:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$337.79	\$16,011,769	\$350.42	13,122,528	\$351.62	\$13,181,696
Medicaid MC	\$374.44	1,916,026	\$350.42	1,752,100	\$352.00	1,760,000
Medicare FFS	\$944.47	12,437,665	\$752.36	19,717,893	\$809.94	21,226,901
Medicare MC	\$598.09	2,949,169	\$752.36	3,761,808	\$809.94	4,049,699
Commercial FFS	\$758.70	311,827	\$367.26	1,984,303	\$370.88	2,003,883
Private Pay	\$394.25	47,310	\$407.98	1,697,601	\$411.99	1,714,300
All Other		<u>0</u>		<u>29,800</u>		<u>30,600</u>
Total		\$33,673,766		42,066,033		\$43,967,079
<u>Expenses</u>						
Operating	\$338.36	\$24,073,722	\$390.81	\$32,523,376	\$410.16	\$34,149,543
Capital	<u>\$122.80</u>	<u>8,736,843</u>	<u>\$106.05</u>	<u>8,825,346</u>	<u>\$111.30</u>	<u>9,266,613</u>
Total Expenses	\$461.16	\$32,810,565	\$496.86	\$41,348,722	\$521.46	\$43,416,156
Net Income		<u>\$863,201</u>		<u>\$717,311</u>		<u>\$550,923</u>
Patient Days		71,149		83,220		83,260
Utilization		82.95%		95.00%		95.05%

The following is noted concerning the operating budget:

- The Medicaid rate is based on the current rate under the statewide pricing methodology and reflects an increase due to capital reimbursement on the new building.
- The Medicare rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2023 and increased by 1% annually for inflation.
- Private pay and other rates are projected based on similar facilities in the same geographical area and are increased by 1% annually for inflation.
- The increase in Year One expense is due to the new lease for the replacement facility plus changes in volume.
 - The projected percentage of direct care staffing costs to projected facility revenues is 49.85% in Year One and 50.14% in Year Three, exceeding the 40% requirement in New York State Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 70.00% in Year One and 70.00% in Year Three, meeting the 70% requirement in New York State Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 1.75% in Year One and 1.19% in Year Three, less than the 5% maximum outlined in New York State Public Health Law §2808.
- The projected utilization for the facility is 95% and 95.05% in Year One and Year Three. It was noted that the facility's annual occupancy averages for 2019, 2020, 2021, and 2022 were 91.8%, 80.6%, 81.4%, and 82.9% respectively. Occupancy was 83.3% for the week ending December 6, 2023 (self-reported information to the Department).

Utilization by payor source is projected as follows:

<u>Payor</u>	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	47,401	66.62%	37,448	45.00%	37,488	45.01%
Medicaid MC	5,117	7.19%	5,000	6.01%	5,000	6.01%
Medicare FFS	13,169	18.51%	26,208	31.49%	26,208	31.48%
Medicare MC	4,931	6.93%	5,000	6.01%	5,000	6.01%
Commercial FFS	411	0.58%	5,403	6.49%	5,403	6.49%
Private Pay/Other	<u>120</u>	<u>0.17%</u>	<u>4,161</u>	<u>5.00%</u>	<u>4,161</u>	<u>5.00%</u>
Total	71,149	100%	83,220	100%	83,260	100%

- The facility's Medicaid admissions of 92.3% in 2021 and 91.7% in 2022 exceeded Kings County's 75% threshold rate of 33.8% for 2021 and 24.4% for 2022.
- Breakeven occupancy for the first year after the replacement of the facility is projected at 93.38%.

Transfer of Shares from the Estate of Livia Goldberg

The applicant has submitted an executed document, which will be effectuated by the Public Health and Health Planning Council (PHHCP). The terms are summarized below:

Date:	June 27, 2022
From:	Estate of Livia Goldberg (died May 10, 2019) willed her interest of 25.15% in Oxford Nursing Home, Inc. equally to her daughters Rochelle Braun, M.D. and Shulamith Goldberg, M.D.
To:	Rochelle Braun, M.D. (12.575%) and Shulamith Goldberg, M.D. (12.575%)
Action:	Rochelle Braun, M.D. and Shulamith Goldberg, M.D. Executrixes of the Estate of Livia Goldberg deceased (the "Estate") who died May 10, 2019. By agreement of all beneficiaries of the Estate, her interest in Oxford Nursing Home, Inc. (the "Corporation") is to be allocated to her two daughters, Rochelle Braun, M.D., and Shulamith Goldberg, M.D. The Estate shall accomplish this transfer upon PHHCP approval.
Payment:	No compensation.

Contract of Sale

The terms of the executed land Contract of Sale are summarized below:

Date:	January 24, 2018
Parcel:	2832 Linden Boulevard, Brooklyn, New York, designated as block 4495, Lot 1
Seller:	Health Insurance Plan of Greater New York
Purchaser:	Conover King Realty, LLC
Purchase Price:	\$11,300,000
Payment of Purchase Price:	\$11,300,000 (closing statement provided)

Lease Agreement

The terms of the related party draft lease agreement are summarized below:

Premises:	A 240-bed RHC (227,174 sq ft located at 2832 Linden Boulevard, Brooklyn, NY 11208)
Lessor:	Conover King Realty, LLC
Lessee:	Oxford Nursing Home, Inc.
Term:	30 Years
Rental:	Rent \$5,020,000, including annual debt service due under the mortgage loan's debt service plus coverage requirements for taxes, insurance, and reserve for replacement contributions plus an additional \$200,000 (\$418,333 per month – \$22.10 per sq. ft.)
Provisions:	Triple Net

The applicant attested that the lease arrangement is a non-arms-length agreement, as members are related. The applicant has provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rate.

Capability and Feasibility

The total project cost to replace the facility is \$84,946,640. Conover King Realty LLC (property owner and landlord) will fund the project via equity of \$21,586,640 (including land already purchased) and a \$63,360,000 self-amortizing 30-year mortgage at a 6.125% interest rate. Newpoint Real Estate Capital has provided a letter of interest as a source of financing. The applicant states they may seek to refinance with a HUD loan in the future.

Working capital requirements should be minimal as operations transfer to the new facility, and revenue streams will not be negatively impacted. Costs associated with relocating residents and staff are included in the budget. The new facility is approximately 7.2 miles away, and residents will be moved by ambulance, which is covered under Medicaid and accounts for most of the patient population.

The budget projects a net income of \$717,311 and \$550,923 in Years One and Three following the replacement of the facility. BFA Attachment B, Oxford Nursing Home, Inc.'s Pro Forma Balance Sheet, shows the entity will start with \$21,787,994 in members' equity. The budget appears reasonable.

BFA Attachment C, Oxford Nursing Financial Summary shows positive working capital, positive net assets, and an average operating income of \$3,270,860 for the period 2020-2022. BFA Attachment D, Oxford Nursing Home Inc., 2022 Certified Financial Statements shows working capital of \$23,500,426, net assets of \$28,398,236, and net income after taxes of \$882,182.

BFA Attachment E presents the proposed members' ownership interest in the affiliated RHCs and their financial summaries.

- Laconia Nursing Home, Inc., for 2020 through 2022, shows average positive working capital, average positive net assets, and average positive operating income of \$2,926,848.
- Cayuga Ridge, LLC d/b/a Cayuga Nursing & Rehabilitation Center, for 2020 through 2022, shows average negative working capital, average positive net assets, and average positive operating income of \$675,192. Per the applicant, Cayuga recently completed a \$25 million renovation, which is expected to significantly increase the capital rate and attract more Medicare and private pay patients.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A-1	Members' Net Worth-Oxford Nursing Home Inc.
BFA Attachment A-2	Members' Net Worth- Conover King Realty LLC
BFA Attachment B	Pro Forma Balance Sheet- Oxford Nursing Home
BFA Attachment C	Financial Summary – Oxford Nursing Center Inc. and Oxford Nursing Home 2021 Certified Financial Statement
BFA Attachment D	Oxford Nursing Home 2022 Certified Financial Statement
BFA Attachment E	Affiliated Nursing Homes

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of February 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to relocate the facility from 144 South Oxford Street, Brooklyn, to a new building to be constructed at 2832 Linden Boulevard, Brooklyn, and transfer 25.15% ownership interest from one deceased member to two existing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

222260 B

Oxford Nursing Home

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed real property loan commitment acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
6. 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]
7. Submission of a copy of the signed/executed Lease Agreement that is acceptable to The Department. [CSL]
8. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **October 15, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2024**, and construction must be completed by **July 15, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The operator shall submit a plan for the transition and relocation of residents to the Metropolitan Area Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 222103-E
Lincare Of New York, Inc.**

Program: LHCSA
Purpose: Establishment

County: Onondaga
Acknowledged: October 17, 2022

Executive Summary

Description

Lincare of New York, Inc. is an existing Licensed Home Care Services Agency (LHCSA) that is seeking approval to transfer 100% of its ownership interest to a new shareholder LLC, KabaFusion NY, LLC.

The applicant provides home infusion therapy of intravenous medications and will continue to serve residents from its main office at 922 Spencer St., Syracuse, NY, and two branch offices at 1151 Pittsford-Victor Road, Suite 217, Pittsford, NY, and 57 Karner Road, Albany, NY.

This Certificate of Need (CON) application does not propose any changes to the LHCSA's service area, branch offices, or licensed services.

OALTC Recommendation
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.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

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

February 8, 2024

Program Analysis

Program Description

Lincare of New York, Inc. is seeking approval to transfer 100% of its ownership interest to a new shareholder, KabaFusion NY, LLC.

The home office located at 922 Spencer Street, Syracuse, NY, 13204, serves the residents of the following counties:

- Broome
- Cayuga
- Chenango
- Cortland
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- Saint Lawrence
- Tioga
- Tompkins

This location provides the following healthcare services:

- Nursing

The Branch Office located at 1151 Pittsford Victor Road, Suite 217, Pittsford, NY, 14534, serves the residents of the following counties:

- Chemung
- Genesee
- Livingston
- Monroe
- Ontario
- Schuyler
- Seneca
- Steuben
- Wayne
- Yates

This location provides the following healthcare services:

- Nursing

The Branch Office located at 57 Karner Road, Albany, NY, 12205, serves the residents of the following counties:

- Albany
- Clinton
- Columbia
- Delaware
- Dutchess

- Essex
- Franklin
- Fulton
- Greene
- Hamilton
- Montgomery
- Otsego
- Rensselaer
- Saratoga
- Schenectady
- Schoharie
- Ulster
- Warren
- Washington

This location provides the following healthcare services:

- Nursing
- Medical Supplies, Equipment, and Appliances

An affidavit of no control has been implemented above the grandparent entity, KabaFusion Holdings, LLC, whereby KabaFusion Parent LLC and all organizations above this entity will refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct and indirect determination of policies, or otherwise (please refer to Attachment A for the organizational chart).

Please note that Lincare of New York, Inc. is 100% owned by KabaFusion NY, LLC, which is 100% owned by KabaFusion Holdings, LLC, which is 100% owned by KabaFusion Parent LLC. Neither KabaFusion NY, LLC nor KabaFusion Holdings, LLC are owned by natural persons.

Character and Competence Review

Lincare of New York, Inc., KabaFusion NY, LLC and KabaFusion Holdings, LLC are comprised of the following individuals:

Sohail Masood, Board Member

- KabaFusion Holdings LLC Chief Executive Officer (October 2009 – Present)

Please refer to Attachment B for the ownership interest in Health Facilities.

Aslam Masood, Board Member

- KabaFusion Holdings LLC, Secretary (July 2010 – Present)

Please refer to Attachment B for the ownership interest in health facilities.

Sohail Merchant, Board Member

- KabaFusion Holdings LLC, President LLC (July 2010 – Present)

Please refer to Attachment B for the ownership interest in health facilities.

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 information provided by the Division of Home and Community Based Services and the New York Board of Pharmacy 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.

Boards of Pharmacy for the following states have indicated no issue with the licensure if the health professionals associated with the application:

- Alabama
- Arkansas
- Arizona
- Colorado
- Connecticut
- Georgia
- Michigan
- New Hampshire
- Missouri
- Kentucky
- Maryland
- Tennessee
- Virginia
- Wisconsin
- California
- Florida
- Idaho
- Iowa
- Indiana
- Kansas
- Louisiana
- Massachusetts
- Maine
- Minnesota
- Vermont
- West Virginia
- Mississippi
- North Carolina
- New Hampshire
- New Mexico
- Nevada
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- Texas
- Wyoming

In addition, the following state agencies have indicated no issue with the licensure of the health professional associated with this application:

- The Commonwealth of Kentucky – Cabinet for Health and Family Services,
- South Carolina Department of Labor, Licensing and Regulation,
- Illinois Department of Financial and Professional Regulation,
- Florida Agency of Healthcare Administration,
- District of Columbia Health Regulation and Licensing,
- Delaware Division of Regulation,
- North Carolina Department of Health and Human Services,
- New Hampshire Department of Health and Human Services,
- Utah Department of Commerce – Occupational Licensing,
- Texas Health and Human Services,
- Virginia Health and Human Services, and
- Washington Department of Health.

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.

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. Please refer to Attachment C.

Conclusion

The individual background review indicates the proposed members have met the standards for approval as set forth in New York State Public Health Law §3605.

Attachments

Attachment A	Organizational Chart
Attachment B	Ownership Interest/Healthcare Affiliations
Attachment C	Workforce Questions/Initiatives

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of February, 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 100% ownership interest from the current shareholder to a new shareholder LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

222103 E

Lincare Of New York, Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 222104-E
American Outcomes Management, LP**

Program: LHCSA
Purpose: Establishment

County: New York
Acknowledged: October 17, 2022

Executive Summary

Description

American Outcomes Management, LP d/b/a AOM Infusion is seeking approval to transfer 100% of a partnership interest from the current partners to a new LLC partner, AOM Acquisition LLC.

American Outcomes Management, LP provides home intravenous (IV) therapy services for patients with chronic and acute disease conditions. The applicant will continue to serve residents from its main office at 36 West 37th Street, New York and from a branch office at 1 Crossfield Ave. West Nyack.

This Certificate of Need (CON) application does not propose any changes to the LHCSA's service area, branch offices, or licensed services.

OALTC Recommendation

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.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

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

February 8, 2024

Program Analysis

Program Description

American Outcomes Management, LP d/b/a AOM Infusion is seeking approval to transfer 100% partnership interest from the current partners to a new LLC partner, AOM Acquisition LLC.

The home office, at 36 West 37th Street, New York, NY, 10018, serves the residents of the following counties:

- Bronx
- Queens
- Kings
- Richmond
- New York

This location will continue to provide the following healthcare services:

- Nursing

The branch office at 1 Crossfield Avenue, Suite 304, West Nyack, NY, 10994, serves the residents of the following counties:

- Dutchess
- Nassau
- Orange
- Putnam
- Rockland
- Suffolk
- Sullivan
- Ulster
- Westchester

This location will continue to provide the following healthcare services:

- Nursing

An affidavit of no control has been implemented above AOM Midco, LLC whereby REP AOM Holdings, LLC and all other organizations above this entity will refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct and indirect determination of policies, or otherwise (please refer to Attachment A for the organizational chart).

Please note that American Outcomes Management, LP is 100% owned by AOM GP, LLC, which is 100% owned by AOM Acquisition LLC, which is 100% owned by AOM Midco, LLC, which is 100% owned by REP AOM Holdings, LLC. American Outcomes Management, LP is not controlled by natural persons.

Character and Competence Review

AOM GP, LLC; AOM Acquisition, LLC; and AOM Midco, LLC are comprised of the following individuals:

Walker Poole, Member – 33.33%

Ridgmont Equity Partners Vice Chairman (January 1993 - Present)

Affiliations

- Perimeter Healthcare - Director (September 2016 - Present)
- Sunvera Group - Director (August 2018 - Present)
- Again Care Group - Director (January 2021 - Present)

Please refer to Attachment B for a full list of individual healthcare facilities and agencies.

Scott Poole, Member - 33.33%

Ridgmont Equity Partners - Partner (January 1995 - Present)

Affiliations

- Perimeter Healthcare - Director (September 2016 - Present)
- Sunvera Group - Director (August 2018 - Present)

Please refer to Attachment B for a full list of individual healthcare facilities and agencies.

Petri Lindberg, Member - 33.33%

Ridgmont Equity Partners - Principal (August 2011 - Present)

Affiliations

- Perimeter Healthcare - Director (September 2016 - Present)
- Sunvera Group - (August 2018 - Present)

Please refer to Attachment B for a full list of individual healthcare facilities and agencies.

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

In or around March 2020, Perimeter Healthcare learned that one of its facilities in the State of Missouri, Woodridge of Missouri, Inc. d/b/a Piney Ridge Center, a Delaware corporation, was subject to an investigation by the Missouri Attorney General's office. A settlement was reached in the amount of approximately \$504,000 to resolve the concerns that were expressed by the Missouri Attorney General's office. The settlement was executed in December 2021. Piney Ridge also took steps before and after the settlement to ensure that appropriate services, including therapy, were being provided to all residents at that facility.

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 following state agencies have indicated no issue with the licensure of the health professionals associated with this application:

- The Alabama State Board of Health,
- State of Louisiana Department of Health and Hospitals,
- Missouri Department of Health and Senior Services,
- State of Arkansas Department of Health,
- Tennessee Department of Mental Health and Substance Abuse Services,
- Texas Department of Health and Human Services,
- Arkansas Department of Human Services: Division of Child Care and Early Childhood Education,
- Missouri Department of Health and Senior Services,
- State of Michigan Department of Licensing and Regulatory Affairs,
- Georgia Department of Community Health,
- South Carolina Department of Health and Environmental Control,
- Georgia Department of Community Health, and
- NC Department of Health & Human Services

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.

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. Please refer to Attachment C.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<h2>Attachments</h2>

OALTC Attachment A	Organizational Chart
OALTC Attachment B	Ownership Interest/Healthcare Affiliations
OALTC Attachment C	Workforce Questions/Initiatives

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of February, 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 100% partnership interest from the current partners to a new LLC partner, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

222104 E

American Outcomes Management, LP

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 231216-E
Tanglewood Manor, Inc.**

Program: LHCSA
Purpose: Establishment

County: Chautauqua
Acknowledged: June 8, 2023

Executive Summary

Description

Tanglewood Manor, Inc., a New York For-Profit Corporation, is requesting to transfer 100% ownership interest of a Licensed Home Care Services Agency (LHCSA) to Culture Care, LLC.

The LHCSA serves the residents of the following counties from an office at 560 Fairmont Avenue, Jamestown, New York 14701:

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Genesee
- Niagara
- Orleans
- Wyoming

The LHCSA provides the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

This Licensed Home Care Services Agency (LHCSA) application does not propose any changes to the LHCSA's service area or licensed services.

**OALTC Recommendation
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.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

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 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 is recommended.

Council Action Date

February 8, 2024

Program Analysis

Program Description

Tanglewood Manor, Inc., a New York For-Profit Corporation, is requesting to transfer 100% ownership interest of a Licensed Home Care Services Agency (LHCSA) to Culture Care, LLC.

The applicant intends to continue to serve the residents of the following counties from an office at 560 Fairmont Avenue, Jamestown, New York 14701:

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Genesee
- Niagara
- Orleans
- Wyoming

The applicant intends to continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

Character and Competence Review

Culture Care, LLC is comprised of the following individuals:

Gary Rohinsky - 50%

CEO, Culture Care, LLC

Affiliations

Palmyra Senior Living (PA)	(February 2022 - Present)
Briarwood Senior Living (PA)	(January 2020 - Present)
Twin Cedar Senior Living (PA)	(January 2020 – Present)
Pearl Valley Rehab & Healthcare Center (PA)	(August 2015 - October 2021)
Pearl Valley Rehab & Healthcare Center (IA)	(August 2015 - October 2021)
Donnellson Health Center (IA)	(April 2017- December 2017)
Riverview Manor (IA)	(April 2017 - December 2017)

Jacob J Guttman - 50%

CFO, Culture Care, LLC

Affiliations

Palmyra Senior Living (PA)	(February 2022 - Present)
Briarwood Senior Living (PA)	(January 2021 - Present)
Twin Cedar Senior Living (PA)	(January 2020 – Present)

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 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.

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.

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 New York State Public Health Law §3605.

Attachments

OALTC Attachment A	Workforce Review
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of February, 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 100% ownership interest to a new shareholder LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

231216 E

Tanglewood Manor, Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 232021-E
Ideal Care SP LLC

Program: LHCSA
Purpose: Establishment

County: Ulster
Acknowledged: August 02, 2023

Executive Summary

Description
Ideal Care SP LLC, a New York limited liability company, is requesting approval for a Stock/Membership Transfer of the Licensed Home Care Services Agency (LHCSA).

OALTC Recommendation
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 only serving patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Current membership of Ideal Care SP LLC:

Table with 2 columns: Members, %
Steven Schonberger 48%
Philip Schonberger 50%
Joseph Schonberger 1%
Jeffrey Schonberger 1%
Total 100%

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

Proposed membership of Ideal Care SP LLC:

Table with 2 columns: Members, %
Steven Schonberger 25%
Philip Schonberger 0%
Joseph Schonberger 25%
Jeffrey Schonberger 25%
Isaac Friedman 25%
Total 100%

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 the financial feasibility of the agency.

The applicant proposes to serve the residents of the following county from an office at 1 Grove Street, Highland, New York 12528:

- Ulster

The applicant intends to continue to provide the following healthcare services:

- Nursing
• Home Health Aide
• Personal Care

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

February 8, 2024

Program Analysis

Program Description

Ideal Care SP, LLC, a New York limited liability company, is requesting approval for a Stock/Membership Transfer of the Licensed Home Care Services Agency (LHCSA).

The applicant is proposing to serve the residents of the following county from an office at 1 Grove Street, Highland, New York 12528:

- Ulster

The applicant intends to continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

Character and Competence Review

Ideal Care SP, LLC is comprised of the following individuals:

Steven Schonberger - 25% (Already PHHPC approved)

Managing Member, Ideal Care SP, LLC

Affiliations

Ideal Care SP, LLC (2013 - Present)

Joseph Schonberger - 25%

Chief Financial Officer (for entities listed below)

Affiliations

Ideal Care SP, LLC (January 2023-Present)
Evergreen Court Home for Adults SP, LLC (January 2015-Present)
The New Village View SP, LLC (January 2016-Present)
The New Golden Acres SP, LLC (2011-Present)
Boro Park Senior Living, LLC d/b/a The Belvedere (January 2015-Present)
The New Lexington Manor, LLC (1999- Present)
The New Future Dreams, LLC (1999-Present)
The New Essecare of NJ, LLC (2004-Present)

Jeffrey Schonberger – 25%

Administrator, The New Lexington Manor

Affiliations

Ideal Care SP, LLC (January 2023-Present)
The New Village View SP, LLC (January 2016-Present)
Evergreen Court Home for Adults SP, LLC (January 2015-Present)
The New Golden Acres SP, LLC (2011-Present)
The New Essecare of NJ, LLC (2004-Present)
The New Future Dreams, LLC (1999-Present)
The New Lexington Manor, LLC (1999- Present)

Isaac Friedman - 25%

Owner/Operator, The Belvedere

Affiliations

Boro Park Senior Living, LLC d/b/a The Belvedere (January 2013-Present)

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

- The Belvedere was fined \$4,410 pursuant to a stipulation and order from a July 14, 2017, and September 18, 2017 survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 487.
- The Belvedere was fined \$50 pursuant to a stipulation and order from a July 13, 2017, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 460.
- On August 19, 2021, the department initiated an administrative proceeding seeking enforcement revocation of Evergreen Court Home for Adults SP, LLC operating certificate pursuant to 18 NYCRR 485.5
- The New Golden Acres SP, LLC settled pursuant to a stipulation and order from November 2, 2021, August 16, 2021, June 21, 2021, April 15, 2021, April 12, 2021, December 19, 2019, December 14, 2018, August 30, 2017, July 26, 2017, and January 26, 2017, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 487.
- On June 4, 2021, the Department suspended The New Village View SP, LLC's operating certificate pursuant to Social Services Law §460-d(4)(b), the respondent's alleged failure to submit plans of correction in response to inspections dated June 11, 2019, and March 28, 2021.
 - Following the violations of New Village View of 2019 and 2021, New Village View and its LHCSA, Ideal Care, temporarily closed the ALP to safely renovate the physical plant. The Operator(s) hired an outside consultant in 2022, approved by the Department of Health (DOH), responsible for the oversight and coordination of the reopening of the New Village View Assisted Living in accordance with NYS Rules and Regulations.
 - The Operator(s), in coordination with the outside consultant(s) and the DOH staff, met regularly to ensure necessary actions and benchmarks were met in accordance with the plan approved by the DOH.
 - The Plan, approved by the DOH, included but was not limited to new leadership for the facility, policies/procedures, employee educational programs, continuity of staff to care for residents, pre-employment policies, communication plans in coordination with the residents, families, and ombudsman, notification and coordination of clinical staff, outside pharmacy, coordination of resident assessments, and transportation of residents and staff.
 - Routine facility reports are submitted to the DOH, and regularly scheduled meetings continue to ensure consistent compliance.
 - As a result of the improvements resulting from monthly meetings with the DOH and the applicant, the DOH can recommend approval at this time.

Need Review

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving 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

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 New York State Public Health Law §3605.

Attachments

OALTC Attachment A	Workforce Review
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of February, 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 73% ownership interest from one withdrawing member and one existing member to two existing members and one new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

232021 E

Ideal Care SP LLC

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason W. Riegert, Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: January 10, 2024

Subject: Certificate of Amendment of the Restated Certificate of Incorporation of Lake Shore Hospital Foundation, Inc.

The attached package was prepared by Mark Schweitzer, 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 memorandum and kindly return the package to Mark Schweitzer for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark Schweitzer, Associate Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: January 18, 2024

Subject: Certificate of Amendment of Certificate of Incorporation of Lake Shore Hospital Foundation, Inc.

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (“PHHPC”) from Kathy Marks, Department of Health General Counsel.
- 2) A June 26, 2023 letter to Colleen Leonard requesting approval to amend the name and powers and purposes stated in Lake Shore Hospital Foundation, Inc.’s Certificate of Incorporation from Patricia C. Sandison, legal counsel for the Corporation.
- 3) A Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents filed November 4, 1981.
- 4) A Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents filed May 21, 1982.
- 5) A Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents filed February 2, 1983.
- 6) A Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents (including Public Health Council (“PHC”) Approval Letter) filed June 19, 2003.
- 7) A Proposed Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., dated March 31, 2003.
- 8) The Amended and Restated Corporate Bylaws of Lake Shore Hospital Foundation, Inc., adopted January 20, 2023.

- 9) An original signed and dated letter dated May 24, 2023 from the CEO of Brooks-TLC Hospital System, Inc., Kenneth Morris, a duly-authorized representative of the intended supported organization, acknowledging that it will accept funds for it raised by the corporation.
- 10) A May 24, 2023 addendum stating a generalized description of the fundraising activities to be undertaken by the Foundation; a list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations; and Confirmation that there are no other entities that control or are controlled by the Foundation at this time.
- 11) January 20, 2023 Meeting Minutes, approving of and authorizing the name change.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: January 18, 2024

Subject: Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc.

Lake Shore Hospital Foundation, Inc. (“LSHF”) requests Public Health and Health Planning Council (“PHHPC”) approval of a proposed Certificate of Amendment of its Certificate of Incorporation, to change the Corporation’s name and purposes.

LSHF is a charitable corporation formed under the New York Not-for-Profit Corporation Law, and was incorporated on November 4, 1981. LSHF includes among its purposes: the solicitation of funds, contributions, or grants from any source to benefit a facility that is located within the State of New York, and that is licensed pursuant to Public Health Law (“PHL”) Article 28. As a brief history, the Corporation amended its Certificate of Incorporation on May 21, 1982, on Feb 2, 1983, and on June 19, 2003, obtaining the appropriate approvals.

The Public Health Council (“PHC”) consented to the filing of the Amended (Current) Certificate of Incorporation of LSHF on July 22, 2002. Consents from the Attorney General’s Office and State Supreme Court were also obtained. LSHF now seeks PHHPC approval to file a Certificate of Amendment to its Certificate of Incorporation dated March 32, 2023. Pursuant to NY Not-For-Profit Corporation Law (“N-PCL”) §804(a)(i); 10 NYCRR § 600.11; and N-PCL § 404(b), (o), and (t), PHHPC must consent to the requested changes prior to the filing of any amended certificate.

Because the Foundation is a not-for-profit corporation that includes among its purposes the solicitation of funds, contributions, or grants from any source to benefit Brooks-TLC (a facility that is located within the State of New York, and that is licensed pursuant to PHL Article 28), additional required documents were provided for this request. Those documents are specifically described herein. Additionally, consent from the NYS Attorney General’s Office will need to be obtained for the requested changes, once Department of Health (“DOH”) and PHHPC approvals are provided.

The proposed March 31, 2023 amendments to the Certificate of Incorporation of the Corporation were authorized by an affirmative unanimous vote of all the members of the Board of Directors of the corporation entitled to vote thereon at a meeting of the Board of Directors duly called and held on January 20, 2023. The corporation has no members, and the meeting minutes are annexed hereto.

The amendment seeks to change the Corporate name and purposes as follows:

- (1) To change the name of the Foundation from Lake Shore Hospital Foundation, Inc. to Brooks-TLC Hospital Foundation, Inc., and;
- (2) To change the purposes of the Foundation to clarify that the Foundation will be a supporting organization for Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), and that, going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC. Brooks-TLC is the legal successor entity to the Foundation's prior supported organization, TLC Health Network.

The current main purpose of the Corporation is to provide support to and for the benefit of TLC NETWORK - Lake Shore Hospital and Lake Shore Nursing Home, in Irving, New York.

Brooks-TLC is the legal successor entity to the Foundation's prior supported organization, TLC Health Network. The Corporation now seeks approval from the Public Health and Health Planning Council ("PHHPC") to change its corporate name to Brooks-TLC Hospital Foundation, Inc., and to change the Corporate purposes to clarify that the Foundation will be a supporting organization for Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), and that, going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC.

The Foundation's charitable purpose is to provide support to Brooks-TLC Hospital System, Inc. and its affiliates ("Brooks-TLC"). The fundraising activities to be undertaken by the Foundation will consist of soliciting contributions, gifts, donations, and grants from various grantors, including the general public, via capital campaigns, grant applications, and by hosting fundraising galas and events for the benefit and support of Brooks-TLC, including without limitation to help promote the Brooks-TLC facility and in furtherance of the betterment of rural healthcare.

Attached is a written request for the proposed amendments from Attorney Patricia Sandison, on behalf of LSHF to the Department, the Corporate Meeting Minutes of LSHF from January 30, 2023, approving the amendment, the current Restated Certificate of Incorporation of LSHF, Prior Amendments to the Certificate of Incorporation, as well as the proposed Certificate of Amendment of the Restated Certificate of Incorporation of LSHF, and the Bylaws of LSHF.

Attached, as required, is a letter dated May 24, 2023 from the CEO of Brooks-TLC Hospital System, Inc., as a duly authorized representative, to acknowledge and confirm, that Brooks-TLC will accept funds and contributions raised for it by Lake Shore Hospital Foundation, Inc. (the "Foundation"), and to acknowledge, confirm, and agree on behalf of Brooks-TLC that Brooks-TLC is a designated supported organization of the Foundation and that the Foundation is organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC.

Also attached, as required, is a statement of a generalized description of the fundraising activities to be undertaken by the Foundation; a list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations; and Confirmation that there are no other entities that control or are controlled by the Foundation at this time.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments

Patricia C. Sandison
Partner
Direct Dial: 518.433.2427
psandiso@hodgsonruss.com



June 26, 2023

VIA E-MAIL AND
FEDEX PRIORITY OVERNIGHT

Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237
(518) 402-0964
E-mail: PHHPC@health.ny.gov

Re: Lake Shore Hospital Foundation, Inc. (the "Foundation")

Dear Ms. Leonard:

On behalf of our client, Lake Shore Hospital Foundation, Inc., we hereby submit for your review and approval a copy of a proposed Certificate of Amendment. The proposed Certificate of Amendment (i) changes the name of the Foundation from Lake Shore Hospital Foundation, Inc. to Brooks-TLC Hospital Foundation, Inc. and (ii) changes the purposes of the Foundation to clarify that the Foundation will be a supporting organization for Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), and that, going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC. Brooks-TLC is the legal successor entity to the Foundation's prior supported organization, TLC Health Network.

Because the Foundation is a not-for-profit corporation that includes among its purposes the solicitation of funds, contributions or grants from any source to benefit Brooks-TLC (a facility that is located within the State of New York and that is licensed pursuant to PHL Article 28), we note the following additional requirements are met:

1. A full copy of the initial certificate of incorporation of the Foundation, and all amendments to same, are enclosed;
2. The enclosed proposed Certificate of Amendment specifically identifies the name of the supported organization (Brooks-TLC);

3. The enclosed proposed Certificate of Amendment specifically includes the requisite disclaimer language relating to the limitations of the Foundation's authority;
4. A copy of the current amended and restated Bylaws of the Foundation is enclosed;
5. An original signed and dated letter from a duly-authorized representative of Brooks-TLC, which is the intended supported organization, acknowledging that it will accept funds for it raised by the Foundation, is enclosed; and
6. Also enclosed is an additional document outlining the following:
 - a. a generalized description of the fundraising activities to be undertaken by the Foundation;
 - b. a list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations; and
 - c. confirmation that there are no other entities which control or are controlled by the Foundation at this time.

We respectfully request consent from your office for the proposed Certificate of Amendment to the Foundation's Certificate of Incorporation, and confirm by this letter that we will not file the proposed Certificate of Amendment with the New York State Department of State until we have obtained final approval from both the Attorney General's Charities Bureau and your office.

After the Certificate of Amendment is filed with the New York State Department of State, we will provide a copy of the document and the filing evidence to you.

Thank you very much for your assistance. As always, I would be happy to discuss any questions or concerns you may have.

Very truly yours,



Patricia C. Sandison /mam

Patricia C. Sandison

PCS/MNM
Enclosure

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number A810811-11 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 29, 2021.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

CERTIFICATE OF INCORPORATION

OF

LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 402 of the Not-For-Profit Corporation Law.

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, HEREBY CERTIFIES:

1. The name of the corporation is LAKE SHORE HOSPITAL FOUNDATION, INC. and is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

2. The corporation is a Type B corporation as provided under Section 201 of the Not-For-Profit Corporation Law.

3. The purposes for which the corporation is to be formed are:

To carry on, conduct activities for charitable, educational, literary or scientific purposes for the benefit of the Lake Shore Hospital, Inc., Lake Shore Nursing Home, Inc. or any other health related facility in the Towns of Hanover, Pomfret and Sheridan in Chautauqua County, New York or Towns of North Collins, Brant and Evans in Erie County, New York. The object of the corporation shall be to effectuate in the following respects:

(a) To accept, hold, invest, reinvest, solicit, acquire, receive and administer any gifts, bequests, devises, benefits or trusts and property of any sort, without limitation as to amount of value, and to use, disburse or donate the income or principal thereof to Lake Shore Hospital, Inc., Lake Shore Nursing Home, Inc. or any other health related facility in the Towns of Hanover, Pomfret and Sheridan in Chautauqua County,

4810811

New York or Towns of North Collins, Brant and Evans in Erie County, New York, and at their direction, said funds to be used exclusively in furtherance of their non-profit, educational, scientific or charital purposes which are set forth in their Certificate of Incorporation.

(b) To give, convey, or assign any of its property outright, or upon lawful terms regarding the use thereof, to other organizations, provided that (1) such organizations shall be organized and operated exclusively for charitable, educational or scientific purposes; (2) transfers of property to such organizations shall, to the extent then permitted under the statutes of the United States Government, be exempt from gift, succession, inheritance, estate or death taxes (by whatever name called) imposed by the United States Government; and (3) such organizations shall, to the extent then permitted under the statutes of the United States Government, be exempt from income taxes imposed by the United States Government.

(c) To the extent permitted by law, to exercise its rights, powers, and privileges, to hold meetings of its Board of Directors, to have one or more offices, and to keep the books of the corporation, in any part of the world.

(d) Alone or in cooperation with other persons or organizations to do any and all lawful acts and things which may be necessary, useful, suitable or proper for the furtherance, accomplishment, or attainment of any or all of the purposes or powers of the corporation.

(e) To assist in the financing of Hospital or Nursing Home facilities, operations, buildings, equipment and supplies which are used in carrying out the charitable, educational or scientific purposes.

(f) In general, to do any and all acts and things, and to exercise any and all powers which may now or hereafter be lawful for the corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the purposes of the corporation.

(g) The corporation shall not engage, nor shall any of its funds, property or income be used in carrying on propaganda or otherwise attempting to influence legislation, nor shall the corporation participate in or intervene in any political campaign on behalf of any candidates for public office, nor shall the corporation engage in subversive or un-American activities.

(h) To do any act or thing incidental to or connected with the foregoing purposes or advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

4. The office of the corporation shall be located at Routes 5 & 20, Irving, Town of Hanover, County of Chautauqua and State of New York.

5. The corporation's activities will be conducted primarily in the Eighth Judicial District of the State of New York.

6. The names and addresses of the initial directors are:

- (a) John Talbot
9497 Lake Shore Road
Angola, New York 14006
- (b) Arthur F. Riordan
112 Long Avenue
Hamburg, New York 14075
- (c) J. Leland Parker
17 Parkway
Silver Creek, New York 14136
- (d) James B. Foster
4742 Lilydale Drive
Hamburg, New York 14075

7. The duration of the corporation shall be perpetual.

8. The Secretary of State is hereby designated as the agent of the corporation upon whom process against the corporation may be served. The Post Office address to which the Secretary of State shall mail a copy of any notice required by law is: Routes 5 & 20, Irving, Town of Hanover, New York 14081.

9. All approvals or consents required to be obtained are endorsed upon or annexed to this Certificate.

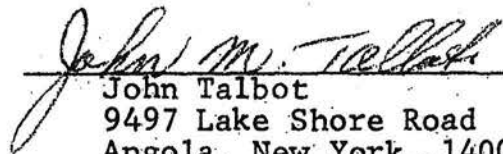
10. There shall be two (2) classes of Trustees of the Lake Shore Hospital Foundation, Inc. Class One shall consist of members of the Board of Directors of the Lake Shore Hospital, Inc. Their total representation on the Board of Trustees of Lake Shore Hospital Foundation, Inc. shall not exceed twenty-five percent

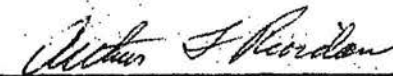
(25%) of the total number of Trustees of the Lake Shore Hospital Foundation, Inc. Class Two shall consist of individuals from the community who are of good reputation and who are not members of the Board of Directors of the Lake Shore Hospital or Lake Shore Nursing Home.


11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to such organizations which qualify under Section 501(c) of the Internal Revenue Code of 1954, as amended, subject to an Order of a Justice of the Supreme Court of the State of New York.


12. That each of the subscribers is over the age of twenty-one (21) years.

IN WITNESS WHEREOF, this Certificate has been signed by each of the subscribers, this 20th day of August, 1981.


John Talbot
9497 Lake Shore Road
Angola, New York 14006

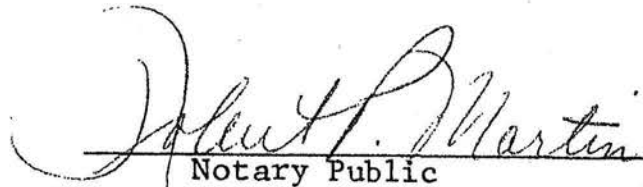

Arthur F. Riordan
112 Long Avenue
Hamburg, New York 14075


J. Leland Parker
17 Parkway
Silver Creek, New York 14136


James B. Foster
4742 Lilydale Drive
Hamburg, New York 14075

State of New York)
County of Chautauqua: SS.

On this 20th day of August, 1981, before me personally came JOHN TALBOT, ARTHUR F. RIORDAN, J. LELAND PARKER and JAMES B. FOSTER to me known and known to me to the persons described in and who executed the foregoing Certificate of Incorporation and they individually acknowledged to me that they executed the same.

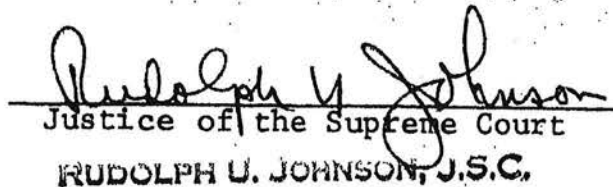

Notary Public

ROBERT P. MARTIN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19... 83

I, RUDOLPH U. JOHNSON, J.S.C. , a Justice of the Supreme Court of the Eighth Judicial District, do hereby approve the foregoing Certificate of Incorporation and consent that the same be filed.

(92)

DATED: ~~August~~ ^{SEPTEMBER} 30, 1981.


Justice of the Supreme Court
RUDOLPH U. JOHNSON, J.S.C.

RESOLUTION

WHEREAS, there is a proposed formation of a new corporation pursuant to the Laws of the State of New York, with the name of LAKE SHORE HOSPITAL FOUNDATION, INC.; and

WHEREAS, there is a similarity of the name of the proposed Foundation with the name of Lake Shore Hospital, Inc.; and

WHEREAS, this corporation has considered the matter, be it

RESOLVED, that the name of the new corporation does not so nearly resemble the name of this corporation as to be calculated to deceive and, therefore, this corporation consents to the use of the name of the LAKE SHORE HOSPITAL FOUNDATION, INC.

LAKE SHORE HOSPITAL, INC.

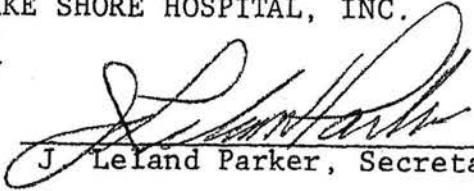
By *Joseph P. Morgano*

Joseph P. Morgano, President

THIS IS TO CERTIFY, that the foregoing is a true copy of the Resolution duly adopted by the Board of Directors of the LAKE SHORE HOSPITAL, INC. on February 23, 1981, at Routes 5 and 20, Irving, New York 14081.

LAKE SHORE HOSPITAL, INC.

By


J. Leland Parker, Secretary

Kenneth J. Braun
Sheriff

Thomas F. Higgins
Undersheriff



Ten Delaware Avenue
Buffalo, New York 14202
(716) 846-7600

Sheriff of Erie County

Re: Lake Shore Hospital Foundation, Inc.

Dear Sir:

The records of the Erie County Sheriff's Department disclose no reference identifiable with the following listed persons who executed a certificate of incorporation for the above-referenced corporation, dated no date given 19 , nor with the persons listed therein as directors until the first annual meeting.

Mr. John Talbot
Dr. Arthur Francis Riordan
Mr. James Bristol Foster

This identification is by name only, and is not to be construed as a positive identification. Please be advised that the files of the Sheriff's Department contain arrests only when made by our Department or where a person is or has been in the custody of the Sheriff of Erie County.

Very truly yours,

KENNETH J. BRAUN,
SHERIFF OF ERIE COUNTY

Charles P. Fink
By: CHARLES P. FINK, CHIEF
IDENTIFICATION BUREAU

cc: Loretta Chrosniak, Clerk
Supreme Court, Special Term





STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N. Y. 12224

Telephone: 474-7206

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G MCSPARRON
ASSISTANT ATTORNEY GENERAL
IN CHARGE
LITIGATION BUREAU

September 25, 1981

Robert P. Martin, Esq.
43 Court Street
Buffalo, New York 14202

Dear Mr. Martin:


Re: LAKE SHORE HOSPITAL FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS
Attorney General

By 
RICHARD S. REDLO
Assistant Attorney General

CERTIFICATE OF
INCORPORATION

DATED: August , 1981.

ROBERT P. MARTIN
████████████████████
████████████████████
████████████████████

43 COURT STREET
BUFFALO, NEW YORK 14202

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED NOV - 4 1981

AMT. OF CHECK \$ 50
FILING FEE \$ 50
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ _____
CERT \$ _____
REFUND \$ _____
SPEC HANDLE \$ _____

BY: mr

Type B
P Chautaugus

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STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number A870559-6 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 29, 2021.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

A870559

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

WE, the undersigned, President and Secretary of LAKE SHORE HOSPITAL FOUNDATION, INC. hereby certify:

1. The name of the corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC. and is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation.
2. The Certificate of Incorporation of the corporation was filed by the Department of State on November 4, 1981.
3. The corporation is a Type B corporation as provided under Section 201 of the Not-For-Profit Corporation Law.
4. Annexed to the original Certificate of Incorporation was the approval of the Department of Law and a Supreme Court Justice of the State of New York as required under Section 102 (a)(3) of the Not-For-Profit Corporation Law. This Certificate of Amendment shall also have affixed to it the approval of the Department of Law and a Justice of the Supreme Court of the State of New York prior to filing with the Department of State of the State of New York.
5. The Certificate of Incorporation is amended:
 - (a) To change the corporate purposes: Paragraph 3 of the Certificate is amended to read:
 3. The purposes for which the corporation is to be formed are:

To carry on, conduct activities for charitable, literary or scientific purposes for the benefit of the Lake Shore Hospital and Lake Shore Nursing Home, both located on Routes 5 & 20, Irving, New York, 14081 and other qualifying organizations. The object of the corporation shall be to effectuate in the following respects:

(a) To accept, hold, invest, reinvest, solicit, acquire, receive and administer any gifts, bequests, devises, benefits or trusts and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income or principal thereof to Lake Shore Hospital or Lake Shore Nursing Home, both located on Routes 5 & 20, Irving, New York, 14081, and other qualifying organizations, and at their direction, said funds to be used exclusively in furtherance of their non-profit, scientific or charitable purposes which are set forth in their Certificate of Incorporation.

(b) To assist in the financing of Hospital or Nursing Home facilities, operations, buildings, equipment and supplies which are used in carrying out their charitable, literary or scientific purposes.

(c) In general, to do any and all acts and things, and to exercise any and all powers which may now or hereafter be lawful for the corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the purposes of the corporation.

(d) The corporation shall not engage, nor shall any of its funds, property, or income be used, in carrying on propaganda or otherwise attempting to influence legislation, nor shall the corporation participate in or intervene in any political campaign on behalf of any candidates for public office, nor shall the corporation engage in subversive or un-American activities.

(e) To do any act or thing incident to or connected with the foregoing purposes or advancement thereof, but not for the pecuniary profit or financial gain of its members, trustees or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

5. (b) To change the corporate address. Paragraph 8 of the Certificate is amended to read:

8. The Secretary of State is hereby designated as the agent of the corporation upon whom process against the corporation may be served. The Post Office Address within the State of New York to which the Secretary of State shall mail a copy of any process is 845 Routes 5 & 20, Irving, New York, 14081.

The Post Office Address to which the Secretary of State shall mail a copy of any notice required by law is 845 Routes 5 & 20, Irving, New York, 14081.

6. The above amendments to the Certificate were authorized by a vote of the majority of all trustees entitled to vote thereon at a Meeting of the Board of Trustees.

7. The corporation has no members.

IN WITNESS WHEREOF, we have executed this Certificate on this 8th day of April, 1982.

John Talbot
John Talbot
President

J. Leland Parker
J. Leland Parker
Secretary

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) SS:

JOHN TALBOT and J. LELAND PARKER, each being severally, duly sworn, depose and say, each for himself, that he, JOHN TALBOT, is the President of LAKE SHORE HOSPITAL FOUNDATION, INC., and he, J. LELAND PARKER, is the Secretary of said Corporation; that they have read the foregoing Certificate of Amendment under Section 803 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, information and belief, and that as to those matters, they believe it to be true.

John Talbot
John Talbot

J. Leland Parker
J. Leland Parker

Subscribed and sworn to before me this 8th day of April, 1982.

JOANNE B. SMITH, Notary Public,
State of New York. Qualified in
Erie County. No. 4727816. My
Commission Expires Mar. 30, 1984
Certificate filed in Chaut. County.

Joanne B. Smith

I, a Justice of the Supreme Court, of the Eighth Judicial District, hereby approve the foregoing Amendment of the Certificate of Incorporation of LAKE SHORE HOSPITAL FOUNDATION, INC.

Dated: APR 19 1982, 1982

Joseph J. Ricotta
Justice of the Supreme Court
JOSEPH J. RICOTTA J. S. C.

*OK
Toni*



STATE OF NEW YORK
DEPARTMENT OF LAW

ALBANY, N.Y. 12224

Telephone: 474-7206

JAMES G. MCSPARRON
ASSISTANT ATTORNEY GENERAL
IN CHARGE
LITIGATION BUREAU

ROBERT ABRAMS
ATTORNEY GENERAL

April 15, 1982

Robert P. Martin, Esq.
43 Court Street
Buffalo, N.Y. 14202

Dear Mr. Martin: .

RE: LAKE SHORE HOSPITAL FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS
Attorney General

By

A handwritten signature in cursive script, appearing to read "Richard S. Redlo".

RICHARD S. REDLO
Assistant Attorney General

022058

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 803 of the
Not-For-Profit Corporation Law.

DATED: April 8, 1982

F

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 21 1982

AMT. OF CHECK \$ 30
FILING FEE \$ 30
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ _____
CERT \$ _____
REFUND \$ _____
SPEC HANDLE \$ _____

BY:

Chautauque
type B

ROBERT P. MARTIN
Attorneys and Counselors at Law
43 COURT STREET
BUFFALO, NEW YORK 14202

A870559

6

S/S

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number A947046-4 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 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

947046

CERTIFICATE OF AMENDMENT

of the

CERTIFICATE OF INCORPORATION

of

LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law

WE, the undersigned, President and Secretary of LAKE SHORE HOSPITAL FOUNDATION, INC. hereby certify:

1. The name of the corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC. and is a corporation as defined in subparagraph (a) (5) of Section 1.02 of the Not-for-Profit Corporation.

2. The Certificate of Incorporation of the corporation was filed by the Department of State on November 4, 1981 under Section 402 for the Not-for-Profit Corporation.

3. The Corporation is a Type B corporation as provided under Section 201 of the Not-for-Profit Corporation Law.

4. Annexed to the original Certificate of Incorporation was the approval of the Department of Law and a Supreme Court Justice of the State of New York as required under Section 102 (a) (3) of the Not-for-Profit Corporation Law. This second Certificate of Amendment shall also have affixed to it the approval of the Department of Law and a Justice of the Supreme Court of the State of New York prior to filing with the Department of State of the State of New York.

5. The Certificate of Incorporation is amended by:

(a) Adding the following paragraph to the corporate purpose:

1) Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment, or for the prevention of cruelty to children or animals, as specified in Section 501 (c) (3) of the

Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954.

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation.

(c) In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or, to another organization to be used in such manner as in the judgment of a Justice of a Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was formed.

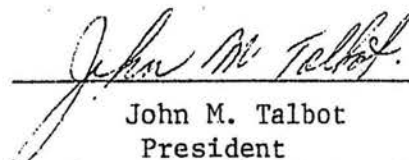
(d) Designating the Secretary of State as agent of the Corporation upon whom process against it may be served and the address to which the Secretary of State shall mail a copy of such process served upon him is Lake Shore Hospital Foundation, Inc., 845 Routes 5 & 20, Irving, NY, 14081.

6. Paragraph 11 of the original Certificate of Incorporation of the LAKE SHORE HOSPITAL FOUNDATION, INC. is hereby deleted in its entirety.

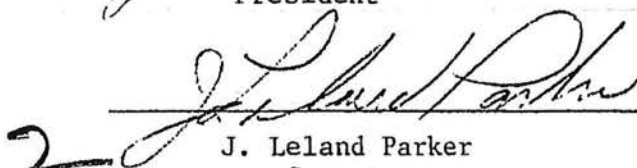
7. The above Amendments to the Certificate were authorized by a vote of the majority of all trustees entitled to vote thereon at a meeting of the Board of Trustees.

8. The Corporation has no members.

IN WITNESS WHEREOF, we have executed this Certificate on this 8th day of October, 1982.



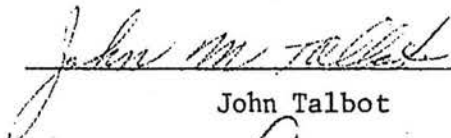
John M. Talbot
President



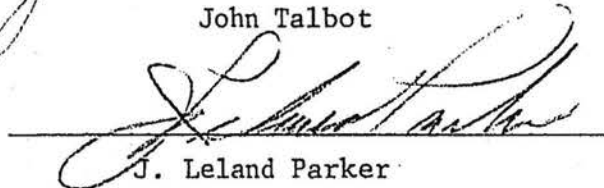
2 J. Leland Parker

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) SS:

JOHN TALBOT and J. LELAND PARKER, each being severally, duly sworn, depose and say, each for himself, that he, JOHN TALBOT, is the President of LAKE SHORE HOSPITAL FOUNDATION, INC. and he, J. LELAND PARKER, is the Secretary of said Corporation; that they have read the foregoing Certificate of Amendment under Section 803 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, information and belief, and that as to those matters, they believe it to be true.

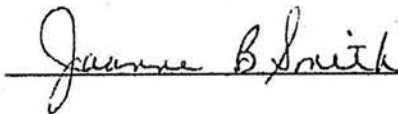


John Talbot



J. Leland Parker

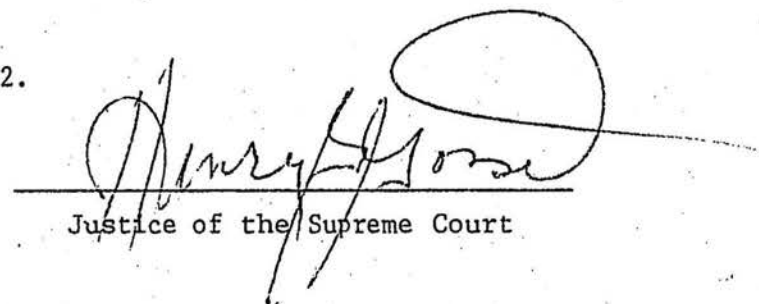
Subscribed and sworn to before me
this 8th day of October, 1982.



JOANNE B. SMITH, Notary Public,
State of New York. Qualified in
Erie County. No. 4727816. My
Commission Expires Mar. 30, 1984
Certificate filed in Chaut. County.

I, a Justice of the Supreme Court of the Eighth
Judicial District, hereby approve the foregoing Amendment of the Certificate
of Incorporation of LAKE SHORE HOSPITAL FOUNDATION, INC.

Dated: October 14, 1982.



Justice of the Supreme Court

1947046

4

CERTIFICATE OF AMENDMENT

of the

CERTIFICATE OF INCORPORATION

of

LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law.

A810811-11

Hanover, Chautauqua County

L-A870559-6

845 Routes 5 & 20

Irving, NY 14081

DATED: November 10, 1982

Lake Shore Hospital Foundation, Inc.

845 Routes 5 & 20

Irving, NY 14081

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED FEB 2 - 1983

AMT. OF CHECK \$ 30

FILING FEE \$ 30

TAX \$ _____

COUNTY FEE \$ _____

COPY \$ _____

CERT \$ _____

REFUND \$ _____

SPEC HANDLE \$ _____

BY: m

13200

*Chautauqua
type B*

*RF
11/10/82
Hanover, Chautauqua
A8 10811-11
Type: B
845 Route 5 & 20,
Irving, NY 14081
A8 20559-6*

ON
[Redacted]

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number 030619000679 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 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

E-12

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

F030619000675

LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the President and Secretary of Lake Shore Hospital Foundation, Inc. (the "Corporation"), hereby certify:

1. The name of the Corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 4, 1981, under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and it is and shall hereafter continue to be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.
4. The Certificate of Corporation of the Corporation is hereby amended to change the purposes for which the Corporation was formed. Paragraph 3 of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

"3. The purposes for which the Corporation is formed are:

(a) To be organized and operated exclusively for charitable and educational purposes by conducting and supporting activities, including the solicitation of funds, for the benefit of and to further the purposes of TLC Health Network ("TLC"), and the affiliates and subsidiaries of TLC that are public charities and Qualified Organizations. An organization is a "Qualified Organization" only if it is described in Section 501(c)(3) and Sections 509(a)(1) or (2) of the United States Internal Revenue Code, as amended (the "Code") and operates within TLC's geographic service area. If TLC or any other Qualified

Organization ceases to be a **Qualified Organization**, the Corporation shall cease to be operated exclusively for the benefit of and to further the purposes of such organization and **shall be operated exclusively for the benefit of and to further the purposes of other organizations which are Qualified Organizations.**

(b) Solely for the above purposes, the Corporation is empowered to receive and administer funds and property for charitable and educational purposes and to that end to take and hold by bequest, devise, gift, grant, purchase, lease, or otherwise, either absolutely or jointly with any other person, persons, or corporations, property, real, personal, tangible, or intangible, or any undivided interest therein, without limitation as to amount or value; to sell, convey, or otherwise dispose of any such property and to invest, reinvest, or deal with the principal or the income thereof, in such manner as, in the judgment of the Board of Directors, will best promote the purposes of the Corporation, except such limitations, if any, as may be contained in the instrument under which such property is received, this Certificate of Incorporation, the bylaws of the Corporation, or any laws applicable thereto.

(c) In general, **to do any and all acts and things, and to exercise any and all contractual and legal powers** that it may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the benefit of and **to further the purposes of a Qualified Organization.**

(d) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law.

(e) The Corporation shall be organized and operated in such a manner that no part of its net earnings shall inure to the benefit of any director, officer, or other private individual, and it shall not carry on propaganda or otherwise attempt to influence legislation, and further, it shall not participate in or intervene in, (including the publishing and distribution of statements) any political campaign on behalf of any candidate for public office.

(f) It is intended that this Corporation shall have the status of a corporation that is exempt from federal income taxation under Section 509(a) of the Code as an organization described in Section 501(c)(3) of the Code and which is other than a private foundation by reason of being described in Section 509(a)(3) of the Code. This Certificate of Incorporation shall be construed

accordingly, and all powers and activities of the Corporation shall be limited accordingly.

(g) The Corporation is organized exclusively for educational and charitable purposes as defined in Section 501(c)(3) of the Code and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code. Upon dissolution of the Corporation, its assets shall, after necessary expenses and payments to creditors, be distributed exclusively for charitable and educational purposes to one or more Qualified Organizations in such manner and amount as the Board of Directors shall determine, subject to an order of a justice of the Supreme Court of the State of New York.

(h) The Corporation is not authorized to establish, operate, or maintain a hospital, or to provide hospital service or health related service or to operate a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40, and 44, respectively, of the Public Health Law. In addition, the Corporation's purposes do not authorize the Corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose."

5. The Certificate of Incorporation of the Corporation is further amended to delete in its entirety paragraph ten of the Certificate of Incorporation, which refers to two classes of Trustees of the Corporation. Said paragraph ten is hereby deleted in its entirety.

6. The foregoing amendments to the Certificate of Incorporation of the Corporation were authorized and approved by majority vote of the entire Board of Directors of the Corporation, there being no Members of the Corporation entitled to vote thereon.

7. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against Corporation that may be served upon him is:

Lake Shore Hospital Foundation, Inc.
845 Routes 5 and 20
Irving, New York 14081

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc. and affirm under penalties of perjury that the statements made herein are true this 14 day of November, 2001.

Thomas E Syroczyński, President
Thomas Syroczyński, President

Mark Catalano, Secretary
Mark Catalano, Secretary

568189 v3

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

Will C. Hilde 9-23-02
ASSISTANT ATTORNEY GENERAL DATE

APPROVAL

I, Joseph G. Makowski, a Justice of the Supreme Court of the Eighth Judicial District, do hereby approve the Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and consent that the same be filed.

Dated: September 27, 2002

GRANTED

SEP 27 2002 19

[Handwritten Signature]
COURT CLERK

[Handwritten Signature]

Joseph G. Makowski
Justice of the Supreme Court



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 22, 2002

Mr. Steven I. Rubinstein
Damon & Morey LLP
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202-4096

Re: Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital
Foundation, Inc.

Dear Mr. Rubinstein:

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 Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., dated November 14, 2001.

Sincerely,

Karen S. Westervelt
Executive Secretary

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LAKE SHORE HOSPITAL FOUNDATION, INC.
Under Section 803 of the Not-for-Profit Corporation Law

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DEPARTMENT OF STATE

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DAMON & MOREY LLP
1000 CATHEDRAL PLACE
298 MAIN STREET
BUFFALO, NEW YORK 14202-4096

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**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LAKE SHORE HOSPITAL FOUNDATION, INC.**

Under Section 803 of the
Not-for-Profit Corporation Law

The undersigned, being the President of LAKE SHORE HOSPITAL FOUNDATION, INC., does hereby certify:

1. The name of the corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC.
2. The Certificate of Incorporation was filed by the New York State Department of State on November 4, 1981. The corporation was formed under the Not-for-Profit Corporation Law of the State of New York.
3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is considered to be a charitable corporation under Section 201 of the Not-for-Profit Corporation Law. After the filing of this Certificate of Amendment, the corporation shall continue to be charitable corporation.
4. The Certificate of Incorporation is hereby amended as follows:

A. To change the name of the corporation. Paragraph 1 of the Certificate of Incorporation, which states the name of the corporation, is hereby amended to read in its entirety as follows:

“The name of the Corporation is Brooks-TLC Hospital Foundation, Inc.”

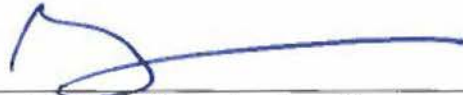
B. To change the purposes for which the Corporation was formed. Paragraph 3 of the Certificate of Incorporation, which sets forth the purposes of the corporation, is hereby amended to clarify the name of the successor entity to the prior supported organization TLC Health Network, by replacing all references to TLC Health Network (“TLC”) in Paragraph 3 of the Certificate of Incorporation with its successor, Brooks-TLC Hospital System, Inc. (“Brooks-TLC”), so that going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC. In addition, subsection (h) of Paragraph 3 is hereby deleted in its entirety and replaced, to read in its entirety as follows:

“(h) Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York to: (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (2) establish, operate, or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44 respectively, of the PHL and implementing regulations; (3) establish or operate an independent practice association; (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law (SSL); or (5) establish, operate, construct, lease, or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York to hold itself out as providing, or to 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.”

5. The foregoing amendments to the Certificate of Incorporation of the corporation were authorized by an affirmative unanimous vote of all the members of the Board of Directors of the corporation entitled to vote thereon at a meeting of the Board of Directors duly called and held on January 20, 2023. The corporation has no members.

6. 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. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him or her is: c/o the Corporation, 529 Central Avenue, Dunkirk, New York 14048.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirmed it as true under the penalties of perjury this 31 day of March, 2023.



Matthew Bogosian, President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LAKE SHORE HOSPITAL FOUNDATION, INC.**

Under Section 803 of the
Not-for-Profit Corporation Law

Filed by: Hodgson Russ LLP
 Attn: Meredith A. McCarthy, Paralegal
 677 Broadway, Suite 401
 Albany, New York 12207

AMENDED AND RESTATED BY-LAWS
OF
LAKE SHORE HOSPITAL FOUNDATION, INC.

A corporation governed by the
Not-for-Profit Corporation Law of New York

ARTICLE I
MEMBERS

Section 1. Members. LAKE SHORE HOSPITAL FOUNDATION, INC. (the “Corporation”), being a charitable corporation as defined in Section 102 of the New York Not-for-Profit Corporation Law, as may be amended from time to time (the “NPCL”), has no members.

ARTICLE II
BOARD

Section 1. Management of Corporate Affairs. Except as otherwise provided by law, the certificate of incorporation of the Corporation or these by-laws, the activities, property and affairs of the Corporation will be managed by the board of directors (the “Board”).

Section 2. Number and Qualifications. The Board will consist of at least three directors; the exact number will be determined from time to time by the Board. The Board may increase or decrease the number of directors of the Corporation by a vote of the majority of the entire Board, but the number of voting directors constituting the entire Board may not be less than three. As used in these by-laws, the term “entire Board” means the total number of directors entitled to vote which the Corporation would have if there were no vacancies (i.e., the number of directors set by the Board, so long as there are three or more, and if not so set by the Board, the number of directors that were elected as of the most recently held election of directors, as well as any directors whose terms have not yet expired). No decrease in the number of directors will shorten the term of any incumbent director. All of the directors will be at least 18 years of age. The CEO of Brooks-

TLC Hospital System, Inc., or his or her designee, will serve as an ex-officio voting director on the Board.

Section 3. Election and Term of Office. Except as otherwise provided by law or these by-laws, each director of the Corporation will be elected at an annual meeting of the Board and shall serve for a term of three years and until his or her successor is elected and qualified. No director (other than ex-officio directors) will be permitted to serve for more than two consecutive three-year terms.

Section 4. Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board for any reason will be filled by a vote of a majority of the directors then in office, even if less than a quorum exists. A director elected to fill a vacancy will hold office until the next annual meeting at which the election of directors is in the regular order of business, and until his or her successor is elected and qualified.

Section 5. Resignation. Any director may resign at any time by giving a written resignation to the President, a Vice President or the Secretary. A resignation will be effective upon delivery unless it specifies an effective date, in which case the resignation is effective at the time specified. Unless the resignation specifies otherwise, Board acceptance of the resignation is not necessary to make it effective.

Section 6. Removal. Any director may be removed for cause by the affirmative vote of a majority of the Board at any meeting of the Board, notice of which referred to the proposed action.

Section 7. Compensation. No director will be compensated for serving as a director, except that the Corporation may reimburse directors for expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation, provided that such expenses are approved by the President or the Board. Expenses incurred by the President will be approved by the Board.

Section 8. Honorary Directors. The Board may at any time, or from time to time, elect honorary directors for such periods and in such numbers as the Board may determine. Unless otherwise specified by the Board, each honorary director will serve for a one-year term. Honorary directors shall be given notice of all Board meetings but shall not be required to attend, shall not be

counted for the purpose of a quorum, and shall not vote or have any liability with respect to any action taken by the Board.

Section 9. Independent Directors. The Audit Committee, if any, or the Independent Directors on the Board or a committee of the Board comprised solely of Independent Directors shall perform the duties set forth in Section 712-a of the NPCL as and when required by law or directed by the Board, which requires that solely Independent Directors will oversee the Corporation's audit matters as may be required from time to time pursuant to the terms of Article IV, Section 4 (Audit Committee). As used in these by-laws, the term "Independent Director" shall have the meaning set forth in Section 102(a)(21) of the NPCL, as may be amended from time to time.

ARTICLE III **MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board, for the transaction of business set forth in the notice of the meeting, will be held at a time and place, within or without the State of New York, determined by the Board and specified in the notice of the meeting.

Section 2. Special Meetings. Special meetings of the Board may be called at any time by the President, or in his or her absence or disability, the Vice President, and must be called by such officer on written request by three or more directors. Such request will state the purpose or purposes for which the meeting is to be called. Each special meeting of the Board will be held at a time and place determined by the person calling the meeting and specified in the notice of the meeting.

Section 3. Annual Meeting. The annual meeting of the Board will be the regular meeting held in March each year, or such other regular meeting designated by the Board.

Section 4. Notice of Meetings. Notice of each regular or special meeting of the Board stating the time and place of the meeting will be given by the President, the Vice President or the Secretary to each director at least three days before the meeting, by mailing the notice, postage prepaid, addressed to each director at his or her residence or usual place of business, or at least two days before the meeting, by delivering the notice to each director personally, by facsimile, by electronic communication or by telephone. A director's attendance at a meeting without protesting, before or at the commencement of such meeting, the lack of notice to him or her constitutes waiver

of notice. A director also may waive notice by submitting a waiver of notice before or after a meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director.

Section 5. Quorum. At all meetings of the Board, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum is required for the transaction of business. The quorum will consist of a majority of the entire Board.

Section 6. Procedure. The order of business and all other matters of procedure at every meeting of the directors may be determined by the person presiding at the meeting.

Section 7. Action by the Board. Except as otherwise provided by law, the certificate of incorporation or these by-laws, the vote of a majority of the directors present will decide any question that may come before the meeting. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

Section 8. 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 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 will be filed with the minutes of the proceedings of the Board or committee.

Section 9. Presence at Meeting by Remote Means. Any one or more members of the Board or any committee thereof who is not physically present at a meeting may participate by means

of a conference telephone or similar remote communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time 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.

Section 10. Confidentiality. It is the policy of the Corporation that the directors treat as confidential the proceedings of all Board and committee meetings, and all information concerning the business activities of the Corporation, except as otherwise authorized by the Board or until there has been general public disclosure, or unless the information is a matter of public record or common knowledge.

ARTICLE IV **COMMITTEES**

Section 1. Committees of the Board. The Board, by resolution or resolutions adopted by a majority of the entire Board, may designate from among its members an Executive Committee and, by a majority vote of the directors present at a meeting, may designate from among its members such other committees of the Board as it may deem advisable. The Board shall appoint the members of each committee of the Board. Each such committee of the Board will consist of three or more directors, and all members of committees of the Board must be Directors. Each committee of the Board will serve at the pleasure of the Board and will have, to the extent provided in the resolution establishing the committee, all the authority of the Board except as otherwise provided by law. All acts done and power and authority conferred by the Executive Committee (if appointed) within the scope of its authority are deemed to be, and may be specified as being, the acts of and under the authority of the Board; provided, however, that the Board may not delegate, and the Executive Committee (and any other committee) shall have no authority as to, any of the following matters:

- (a) filling of vacancies in the Board or in any committee of the Board;
- (b) amendment or repeal of these By-Laws or the adoption of new By-Laws;
- (c) amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable;

- (d) changing the number of directors;
- (e) election or removal of officers and directors;
- (f) approval of a merger or plan of dissolution;
- (g) approval of the sale, lease, exchange or other disposition of all, or substantially all, the assets of the Corporation; or
- (h) amendment of the Corporation's certificate of incorporation.

Section 2. Executive Committee. The Executive Committee, if appointed, will consist of three or more directors who are also officers of the Corporation. Except as otherwise provided by law, the members of the Executive Committee shall be appointed by a majority of the entire Board or a higher vote, if required by law. In the interim between meetings of the Board, the Executive Committee has all the authority of the Board except as otherwise provided by law. All acts done and power and authority conferred by the Executive Committee within the scope of its authority are deemed to be, and may be specified as being, the acts of and under the authority of the Board.

Section 3. Committees of the Corporation. In addition to committees of the Board, the Board may create committees of the Corporation to serve at the pleasure of the Board and to perform tasks assigned by the Board. Persons other than directors may be members of committees of the Corporation. Committees of the Corporation have no authority to act on behalf of the Board or to bind the Board.

Section 4. Audit Committee. If, at any time, the Corporation registers under Article 7-A to solicit contributions and raises more than \$1 Million in annual total support, then it shall appoint an Audit Committee, which will be a committee of the Board and will consist solely of Independent Directors as defined in Article II, Section 9. The Audit Committee, if appointed, will be a committee of the Board. The Audit Committee shall oversee the accounting and financial reporting processes of the Corporation and any audit of the Corporation's financial statements. In addition, the Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor. In addition, such Audit Committee shall also comply with all the additional audit oversight obligations in accordance with Section 712-A of the NPCL when and as required.

Section 5. Acts and Proceedings. Each committee will keep regular minutes of its proceedings and report its actions to the Board when required.

Section 6. Meetings of Committees. Committees will meet at such times and places as the chairperson of the committee determines and the notice of the meeting specifies. Meetings of committees of the Board will be governed by the provisions of Sections 4, 5, 6, 7, 8, 9 and 10 of Article III of these by-laws, which govern meetings of the entire Board, except that notice of meetings of the Executive Committee will be given not less than twenty-four hours before such meeting.

ARTICLE V **OFFICERS**

Section 1. Officers. At its annual meeting, the Board will elect from among its members a President, a Vice President, a Secretary, and a Treasurer. The Board may from time to time elect additional officers having titles, authority and duties determined by the Board. Except as otherwise provided by law, no employee of the Corporation shall serve as President of the Board or hold any other title with similar responsibilities unless such employee is elected President or such other title with similar responsibilities by at least a two-thirds vote of the entire Board, provided that the Board contemporaneously documents in writing the basis for such approval.

Section 2. Term of Office. Unless otherwise determined by the Board, officers will hold office until the next annual meeting of the Board and until their successors have been elected and qualified.

Section 3. Removal. Any officer may be removed or have his or her authority suspended by the Board at any time, with or without cause.

Section 4. Resignation. Any officer may resign at any time by giving a resignation in writing to the Board, the President or the Secretary. A resignation will be effective upon delivery unless it specifies an effective date, in which case the resignation is effective at the time specified. Unless the resignation specifies otherwise, Board acceptance of the resignation is not necessary to make it effective.

Section 5. Vacancies. If any Board office becomes vacant for any reason, the Board has the power to fill that vacancy.

Section 6. Duties of Officers May Be Delegated. If an officer is absent or unable to perform his or her duties, or for any other reason that the Board deems sufficient, the Board, except where otherwise provided by law, may delegate the powers or duties of any officer to any other officer or to any director.

Section 7. Officers Holding Two or More Offices. Any two or more Board offices, except those of President and Secretary, may be held by the same person, but no officer will 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. Compensation. No officer will be compensated for serving as an officer, except that the Corporation may reimburse officers for expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation, provided that such expenses are approved by the President or the Board. Expenses incurred by the President will be approved by the Board.

Section 9. The President. The President will be the chief executive and administrative officer of the Corporation and will have the general powers and duties of supervision and management of the Corporation and will perform all such other duties as usually pertain to the office or are properly required by the Board. The President will preside at all meetings of the Board.

Section 10. Vice President. The Vice President will, in the absence or at the request of the President, perform the duties and exercise the powers of the President. The Vice President will also have such powers and perform all such other duties as usually pertain to the office or are properly required by the Board. The Vice President, in the absence of the President, will preside at all meetings of the Board.

Section 11. The Secretary. The Secretary will ensure that the minutes of the Board are properly kept. He or she will: attend to the giving and serving of all notices of the Corporation; have charge of such books and papers as the Board may direct; attend to such correspondence as may be assigned; and perform all such other duties as usually pertain to the office or are properly required by the Board.

Section 12. The Treasurer. The Treasurer will ensure monitoring of the financial activities of the Corporation by the Board. The Treasurer will perform all such other duties as usually pertain to the office or are properly required by the Board. The Treasurer will present the annual report to the Board setting forth in full the financial resources of the Corporation.

ARTICLE VI
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right of Indemnification. The Corporation will indemnify any person who is made, or is threatened to be made, a party to an action or proceeding by reason of the fact that he or she (or his/her testator or intestate) was a director or officer of the Corporation. Such indemnification will be in accordance with and to the fullest extent permitted by the NPCL or other applicable law, as such law now exists or is subsequently adopted or amended. It will apply to any action or proceeding or related appeal, whether criminal, civil, administrative or investigative, and will apply regardless of whether the director or officer is in office at the time of the action or proceeding. However, the Corporation will indemnify a director or officer in connection with an action or proceeding initiated by that director or officer only if the action or proceeding was authorized by the Board.

Section 2. Advancement of Expenses. The Corporation may pay expenses incurred by a director or officer in connection with an action or proceeding described in Section 1 of this Article in advance of the final disposition of that action or proceeding. Such advances may be paid only if: (a) the director or officer agrees in a signed writing to repay the advance if he or she is ultimately found not to be entitled to indemnification; and (b) the advance is approved by the Board acting by a quorum consisting of directors who are not parties to the action or proceeding or, if such a quorum is not obtainable, then by vote of a majority of the entire Board. To the extent permitted by law, the Board may advance expenses under this provision without having to find that the director or officer met the applicable standard of conduct required for indemnification.

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights provided in Sections 1 and 2 of this Article:

- (a) will be available with respect to events occurring prior to the adoption of this Article;

- (b) will continue to exist after any rescission or restrictive amendment of this Article with respect to events occurring prior to such rescission or amendment;
- (c) will be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the director or officer (or his/her testator or intestate), on the basis of applicable law in effect at the time the rights are claimed; and
- (d) will be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the director or officer seeking such rights were parties to a separate written agreement.

Section 4. Other Rights. The rights provided in Sections 1 and 2 of this Article are not exclusive of any other rights to which a director or officer of the Corporation or other person may now or subsequently be otherwise entitled, whether contained in the certificate of incorporation, these by-laws, a resolution of the Board or an agreement providing for such indemnification; the creation of such other rights is expressly authorized. Without limiting the generality of this section, the rights provided in Sections 1 and 2 of this Article are not exclusive of any rights, pursuant to statute or otherwise, of a director or officer or other person to have his or her costs and expenses in an action or proceeding assessed or allowed in his or her favor, against the Corporation or otherwise.

Section 5. Severability. If this Article or any part of it is held unenforceable in any respect by a court of competent jurisdiction, it will be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article will remain fully enforceable. Any payments made pursuant to this Article will be made only out of funds legally available for such payments.

ARTICLE VII **CORPORATE FINANCE**

Section 1. Corporate Funds. The funds of the Corporation will be deposited in its name with banks or other depositories designated by the Board. All checks, notes, drafts and other negotiable instruments of the Corporation will be signed only by those officers, agents or employees authorized by the Board to sign. No officers, agents or employees of the Corporation, alone or with others, have the power to make any checks, notes, drafts or other negotiable instruments in the name of the Corporation or to bind the Corporation thereby, except as provided in this Section.

Section 2. Fiscal Year. The fiscal year of the Corporation will be the twelve-month period ending on December 31, unless otherwise determined by the Board.

Section 3. Loans to Directors, Officers, and Key Persons. No loans will be made by the Corporation to its Directors, Officers, or Key Persons (as such term is defined in Article VIII below) or to any other corporation, firm, association or other entity in which one or more of its Directors, Officers or Key Persons are directors, officers or key persons or hold a substantial financial interest, except a loan by one charitable corporation to another charitable corporation.

Section 4. Gifts. The Board, the Executive Committee or any authorized officer, employee or agent of the Corporation may accept on behalf of the Corporation any contribution, gift, bequest or devise for any general or special purpose or purposes of the Corporation.

Section 5. Income from Corporate Activities. All income from activities of the Corporation will be applied to the maintenance, expansion or operation of the lawful activities of the Corporation.

Section 6. Annual Report. At the annual meeting of the Board, the President and Treasurer will present to the Board a report, verified by the President and Treasurer, showing in appropriate detail the following:

- (a) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve-month fiscal period of the Corporation terminating not more than six months prior to said meeting;
- (b) the principal changes in assets and liabilities, including trust funds, during said fiscal period;
- (c) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and
- (d) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

Such report will be filed with the minutes of the annual meeting of the Board.

ARTICLE VIII
CONFLICT OF INTEREST POLICY

Section 1. Purpose. The purpose of the Conflict of Interest policy is to protect the Corporation's interest when it is contemplating entering into a Related Party Transaction, or other transaction or arrangement that might benefit the private interest of an officer, director, Key Person or might result in a possible excess benefit transaction. This policy supplements but does not replace any other applicable state and federal laws governing conflicts of interest applicable to the Corporation.

Section 2. Definitions.

(a) “*Affiliate*” of the Corporation, as set forth in Section 102(a)(19) of the NPCL, means any entity controlled by, or in control of, the Corporation.

(b) “*Compensation*” includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

(c) A “*Conflict of Interest*” shall exist: (i) when an Interested Person has a Financial Interest in a proposed transaction; or (ii) with respect to all proposed Related Party Transactions; or (iii) if the Deciding Body makes the determination in its sole discretion that a Conflict of Interest exists.

(d) “*Deciding Body*” means the Board, or a committee thereof appointed by the Board, which is responsible for overseeing the implementation of and compliance with the Corporation's Conflict of Interest Policy.

(e) “*Financial Interest*”: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

(i) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,

(ii) a Compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

(iii) a potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

(f) “*Interested Person*”: An Interested Person is any (i) Related Party or (ii) any director, officer, Key Person or member of a committee with Board-delegated powers, who has a direct or indirect Financial Interest, or who has any other interest or relationship that could reasonably be viewed as having the potential to affect his or her decision-making judgment.

(g) “*Key Person*” as set forth in Section 102(a)(25) of the NPCL, means any person other than a director or officer, whether or not an employee of the Corporation, who: (i) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or (iii) alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget.

(h) “*Related Party*”, as set forth in Section 102(a)(23) of the NPCL, means: (i) any director, officer or key person of the Corporation or any affiliate of the Corporation; (ii) any relative of any director, officer, or key person of the Corporation or any affiliate; or (iii) any entity in which an individual described in clause (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%. Said information shall be disclosed to the Corporation by a director upon joining the Board and annually thereafter.

(i) “*Related Party Transaction*”, as set forth in Section 102(a)(24) of the NPCL, means any transaction, agreement, or other arrangement in which a “related party” has a financial interest and in which the Corporation or any of its affiliates is a participant, except that a transaction shall not be a related party transaction if: (i) the transaction or the related party’s financial interest in the transaction is de minimis; (ii) the transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms; or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the Corporation

intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

(j) “*Relative*” of an individual, as set forth in Section 102(a)(22) of the NPCL, means: (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

Section 3. Procedures.

(a) Duty to Disclose. In connection with any actual or possible Conflict of Interest, an Interested Person must disclose the existence of the financial or other interest and be given the opportunity to disclose all material facts to the Deciding Body.

(b) Determining Whether a Conflict of Interest Exists. After disclosure of the interest and all material facts, and after any discussion with the Interested Person, he or she will leave the Deciding Body’s meeting while the determination of a Conflict of Interest is discussed and voted upon. The remaining Deciding Body members will decide if a Conflict of Interest exists.

(c) Procedures for Addressing the Conflict of Interest. The Deciding Body will determine by a majority vote of the disinterested directors whether the transaction or arrangement is fair, reasonable and in the Corporation’s best interest. In conformity with the above determination it will make its decision as to whether to enter into the transaction or arrangement.

(d) Additional Procedures for Addressing Certain Conflicts of Interest. The Corporation shall not enter into a Related Party Transaction unless the transaction is determined by the Deciding Body to be fair, reasonable and in the Corporation’s best interest at the time of such determination. Any director, officer or Key Person who has an interest in a Related Party Transaction shall disclose in good faith to the Deciding Body the material facts concerning such interest. In addition, with respect to any Related Party Transaction in which a Related Party has

a substantial Financial Interest, the Deciding Body shall: (i) prior to entering into the transaction, consider alternative transactions to the extent available; (ii) approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and (iii) contemporaneously document in writing the basis for the Deciding Body's approval, including its consideration of any alternative transactions.

(e) No Improper Attempts to Influence Vote. The Interested Person with the Conflict of Interest is prohibited from making any attempt to influence improperly the deliberation or voting on the matter giving rise to the Conflict of Interest.

(f) Violations of the Conflicts of Interest Policy. If the Deciding Body has reasonable cause to believe that an individual has failed to disclose actual or possible Conflicts of Interest, it will inform the individual of the basis for such belief and afford the individual an opportunity to explain the alleged failure to disclose. If, after hearing the individual's response and after making further investigation as warranted by the circumstances, the Deciding Body determines the individual has failed to disclose an actual or possible Conflict of Interest, it will take appropriate disciplinary and corrective action.

Section 4. Records of Proceedings. The minutes of the Deciding Body's meeting will contain the names of persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible Conflict of Interest, the nature of the Financial Interest, any action taken to determine whether a Conflict of Interest was present, the Deciding Body's decision as to whether a Conflict of Interest in fact existed, the names of persons who were present for discussions, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 5. Compensation. Any person (or family member of such person) who receives Compensation or other payment, directly or indirectly, from the Corporation is precluded from voting on matters pertaining to his/her Compensation or other payment. Notwithstanding the previous sentence, no director will be prohibited from deliberating or voting concerning Compensation for service on the Board that is to be made available or provided to all directors of the Corporation on the same or substantially similar terms. Directors who receive Compensation,

directly or indirectly, from the Corporation may provide information to the Deciding Body regarding Compensation.

Section 6. Initial and Annual Statements. Each director will annually sign a statement which affirms that he or she is aware of and understands the Corporation's Conflict of Interest policy, has agreed to comply with the policy, and understands that the Corporation is charitable and, in order to maintain its federal tax exemption, it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. In addition, each Director shall initially (prior to his or her initial election) and annually thereafter complete, sign and submit to the Secretary of the Corporation (or a designated compliance officer) a written statement identifying, to the best of his or her knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the director might have a Conflict of Interest. The Secretary of the Corporation (or a designated compliance officer) shall provide a copy of all completed statements to the Chair of the Deciding Body.

Section 7. Periodic Reviews. To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its section 501(c)(3) tax-exempt status, the Board will conduct periodic reviews, including, at a minimum, whether Compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining, and whether any partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction. The Corporation may, but need not, use outside advisors to assist it in its periodic reviews. If outside advisors are used, their use will not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

ARTICLE IX
WHISTLEBLOWER POLICY

Section 1. Whistleblower Policy. The Corporation will adopt a Whistleblower Policy if and when it has 20 or more employees and in the prior fiscal year had annual revenue in excess of \$1 Million.

ARTICLE X
AMENDMENTS

Section 1. Procedure for Amending By-Laws. By-laws of the Corporation may be adopted, amended or repealed at any meeting of the Board, notice of which detailed the proposed action, by the vote of two-thirds of the entire Board on at least ten days' prior notice, which notice shall set forth the proposed bylaws modifications.



BROOKS-TLC HOSPITAL SYSTEM, INC.


May 24, 2023

Re: Supported Organization of the Lake Shore Hospital Foundation, Inc. (the "Foundation")

To Whom it May Concern:

On behalf of Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), I hereby acknowledge and confirm, as a duly authorized representative of Brooks-TLC, that as a general matter Brooks-TLC will accept funds and contributions raised for it by Lake Shore Hospital Foundation, Inc. (the "Foundation"). I further acknowledge, confirm, and agree on behalf of Brooks-TLC that Brooks-TLC is a designated supported organization of the Foundation and that the Foundation is organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC.

Very truly yours,


Name:
Title: *President / CEO*



BROOKS-TLC HOSPITAL SYSTEM, INC.

Lake Shore Hospital Foundation, Inc.

ADDENDUM STATEMENT OF ADDITIONAL INFORMATION
RELATING TO PROPOSED CERTIFICATE OF AMENDMENT APPROVAL.

Dated May 24, 2023

In connection with the proposed Certificate of Amendment:

a. A generalized description of the fundraising activities to be undertaken by the Foundation

Lake Shore Hospital Foundation, Inc. (to be named Brooks-TLC Hospital Foundation, Inc.) (the "Foundation") is a charitable corporation formed under the New York not-for-profit corporation law. The Foundation has no members and exists as an independent, stand-alone supporting organization governed by a self-perpetuating board of directors. The Foundation's charitable purpose is to provide support to Brooks-TLC Hospital System, Inc. and its affiliates ("Brooks-TLC"). The fundraising activities to be undertaken by the Foundation will consist of soliciting contributions, gifts, donations, and grants from various grantors, including the general public, via capital campaigns, grant applications, and by hosting fundraising galas and events for the benefit and support of Brooks-TLC, including without limitation to help promote the Brooks-TLC facility and in furtherance of the betterment of rural healthcare.

b. A list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations

Matthew Bogosian, Director & President

12165 Forestville Rd
Silver Creek, NY 14136
716-672-9181 - Cell
716-934-2099 – Home

Email: matt@thebackline.com

- Mr. Bogosian is owner of The Back Line in Silver Creek
- Mr. Bogosian was on the Board of Lake Shore Hospital previously

Thomas Syroczyński, Director & Vice President
21578 Bellhaven Way
Estero, FL 33928
716-866-4690 – Cell
Email: Kemms4@aol.com

- Mr. Syroczyński is currently retired
- Mr. Syroczyński was on the Board of Lake Shore Hospital Foundation previously

Dr. James Wild, Director and Secretary of Lake Shore Hospital Foundation
732 Lake Street
Angola, NY 14006
716-241-7067 - Cell
Email: jwild@roadrunner.com

- Dr. Wild is a physician at Tri County Family Medicine – now The Chautauqua Center
- Dr. Wild is on the Board of Lake Shore Hospital Foundation

In addition, the bylaws of the Foundation provide that the CEO of Brooks-TLC or their designee will serve as ex-officio voting director of the Foundation. Kenneth Morris, CEO/President of Brooks-TLC Hospital System, 3 Primrose Lane, Fredonia, NY 14063, 716-363-7207. He is not part of any other non-profit affiliates or past/present board member.

c. Confirmation that there are no other entities that control or are controlled by the Foundation at this time.

There are no other entities that control or are controlled by the Foundation at this time.

Lake Shore Hospital Foundation Meeting

January 20th, 2023

2:30 pm – Medical Library/phone

Present: Matt Bogosian - President, Thomas Syroczyński - Vice President via phone, James Wild MD – Secretary/Treasurer, Ken Morris, President and CEO of Brooks-TLC Hospital System, Inc., Julie Morton, COO/CNO, Christine Bonaguide, Attorney Hodgson Russ

TOPICS	DISCUSSION	ACTION
Call to Order	The meeting was called to order at 2:30 pm	Informational.
Approval of Agenda	Agenda was approved.	Agenda was approved.
Counsel’s Report	Christine Bonaguide, Attorney from Hodgson Russ attended the meeting and reviewed documents as presented and each item discussed and approved.	Informational on Board Governance Matters.
Board Governance Matters:	<p>Consideration for approval of proposed amendment and restatement of the Foundation’s Bylaws to effect compliance with statute changes and Board governance developments including the Conflict of Interest Policy included as Article VIII therein – Requisite vote – two-thirds of entire board.</p> <p>With approval of the proposed amendment, Looking to expand the size of the Board of Directors to fix the number of directors at four and Elect CEO of Brooks-TLC Hospital System Inc., or his or her designee as ex-officio voting Director.</p> <p>Certificate of Amendment of the Foundation was reviewed and discussion was held.</p>	<p>Discussion on proposed amendment and restatement noted - Reviewed and adopted.</p> <p>Amendment was adopted and with this Ken Morris was appointed as ex-officio.</p> <p>Approved and will be filed by Christine Bonaguide with the Attorney General – Will take several months to process.</p>

TOPICS	DISCUSSION	ACTION
	<p>Conflict of Interest Disclosure statement was reviewed by the committee and action taken</p> <p>Next Steps – The Annual meeting will be held in March where potential board members will be reviewed and move forward with increasing the size of the board. Welcome letters to go out to the potential board members. At this time, there are a couple of candidates. Dr. Wild to speak to Christina Jimerson about potential Seneca Nation representation on the Board. At the June meeting, Voting will occur for the new members.</p> <p>For potential donations, If funds are restricted by donor, there is a Grant agreement or endorsement agreement that needs to be completed. Christine Bonaguide will provide the form. If no restrictions, they just need to be applied accordingly.</p> <p>Name change for the Lake Shore Hospital Foundation to be noted – Brooks TLC Hospital Foundation Inc. Paperwork changed and will sent out for signature and filed appropriately.</p> <p>Banking paperwork with Evans National to be completed to have the appropriate signors on the accounts.</p>	<p>All were in-agreement and will sign and send back before the next Board meeting.</p> <p>Discussion and next steps were reviewed by the Board.</p> <p>Informational on potential donations was discussed with the Board.</p> <p>Reviewed and approved of name change but can continue as Lake Shore Hospital Foundation until the final approval is given by State.</p> <p>Follow-up on banking to occur with Evans Bank and reported at the next meeting.</p>

TOPICS	DISCUSSION	ACTION
	Consideration for prospective new directors for election at the 2023 annual meeting was discussed. Any potential new members will be brought to this meeting and reviewed by the Board.	This will be included on the Agenda for the Annual meeting.
Open Discussion	Nothing at this time.	Nothing to report at this time.
Meeting adjournment	Meeting was adjourned at 3:05 pm	Informational.

Respectfully Submitted By

Carrie Fix Executive Assistant – COO/CNO, Submitted on: 1-23-2023

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of February 2024, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., dated March 31, 2023.

MEMORANDUM

To: Kathy Marks, General Counsel

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: January 12, 2024

Subject: Open Door Family Medical Center, Inc. – Amend Certificate of Incorporation

The attached package was prepared by Mark Schweitzer, 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 Mark Schweitzer for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark A. Schweitzer, Associate Attorney
Division of Legal Affairs, Bureau of Health Facility Planning and Development

Date: January 12, 2024

Subject: Open Door Family Medical Center, Inc. – Amend Certificate of Incorporation

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 Open Door Family Medical Center, Inc., dated August 23, 2023;
- 3) An Affidavit of the President of the Corporation, sworn to August 22, 2023, Certifying the submitted documents.
- 4) A photocopy of the proposed Amended Certificate of Incorporation of Open Door Family Medical Center, Inc., dated August 22, 2023;
- 5) A photocopy of the current and prior Certificates of Incorporation and Amendments of Open Door Family Medical Center, Inc., including associated approvals, consents, resolutions, and certifications;
- 6) Corporate Bylaws;
- 7) Resolutions of the Board of Directors of Open Door Family Medical Center, Inc., dated March 22, 2023, authorizing the amendment of the Certificate of Incorporation and the addition of corporate purposes;
- 8) NYS Office of Mental Health Approval Letter and Certificate for filing the Proposed Amended Certificate of Incorporation;

Attachments

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: January 11, 2024

Subject: Open Door Family Medical Center, Inc. – Amend Certificate of Incorporation

Open Door Family Medical Center, Inc. (“ODFMC”) requests Public Health and Health Planning Council (“PHHPC”) approval to change its corporate purposes to add language to engage in the following:

"To operate programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of such services, an Operating Certificate from the New York State Office of Mental Health and the corporation may not establish any such facility or program without first obtaining such Operating Certificate."

ODFMC is a Not-for-Profit Corporation operating a Diagnostic and Treatment Center that was initially approved by the Public Health Council (“PHC”) on April 7, 1975, as Ossining Open Door Associates, Inc., when PHC Consented to the filing of its initial Certificate of Incorporation. Later amendments to the Certificate of Incorporation were made and approved by PHC and the other required entities. Those amendments are listed below, and the documents and approvals are attached. PHHPC consented to the filing of the current Certificate of Incorporation of ODFMC on February 1, 2006, which was filed with the NYS Department of State on April 28, 2006.

A brief background of the prior Amendments to the Certificate of Incorporation is as follows: The Certificate of Incorporation of the Corporation was filed with the Department of State on May 2, 1975 pursuant to the Not-for-Profit Corporation Law of the State of New York (the “NPCL”); A Certificate of Amendment of the Certificate of Incorporation was filed on April 30, 1986; a Certificate of Amendment of the Certificate of Incorporation was filed on March 17, 1992; a Certificate of Amendment of the Certificate of Incorporation was filed on December 27, 1999; and a Restated Certificate of Incorporation of the Corporation (the current Certificate of Incorporation) was filed on April 28, 2006.

Because PHHPC (and its predecessor) previously approved of ODFMC’s Certificates of Incorporation and their filing, ODFMC now requires and requests PHHPC approval to amend its Certificate of Incorporation to add the certain purposes proposed above, and as required by NPCL § 804(a)(i) and 10 NYCRR § 600.11. PHHPC must consent to the requested changes prior to the filing of any amended certificate. Once the changes are made, ODFMC will then need to apply to the New York State Office of Mental Health for appropriate licensure.

ODFMC has submitted Resolutions of the Board of Directors to add the requested language, a copy of its current Operating Certificates, current, prior, and proposed corporate documents, and the associated approvals, consents, and certifications, and an Affidavit certifying the submitted documents.

There is no legal objection to the requested change in corporate purposes, and the Restated Certificate of Incorporation of ODFMC is in legally acceptable form.

Attachments.

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

350 BEDFORD STREET • STAMFORD, CONNECTICUT 06901
TEL (203) 316-0483 • FAX (203) 399-0505
www.garfunkelwild.com

FILE NO.: 14272.0011

August 23, 2023

Ms. Colleen Frost
Executive Secretary, Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Via FEDERAL EXPRESS: 203-399-0514

Re: Request for Consent to Amend Certificate of Incorporation of Open Door Family Medical Center, Inc. (the "Corporation").

To Whom It May Concern:

I enclosed a copy of the proposed Amendment to the Certificate of Incorporation of the Corporation. We request Public Health and Health Planning Council and Department of Health approval of this proposed Amendment to the Certificate of Incorporation or a letter from the Department of Health stating that no formal approval of the Department of Health or the Public Health and Planning Council is required. The purposes of the Corporation will be amended to include the following:

“To operate programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of such services, an Operating Certificate from the New York State Office of Mental Health and the corporation may not establish any such facility or program without first obtaining such Operating Certificate.”

This amendment is being filed subsequent to the consent of the Board of Directors of the Corporation to make the amendment stated above and to amend the Corporation's Certificate of Incorporation.

Also enclosed to aid you in your review are copies of filed Certificate of Incorporation and all subsequent amendments to the Certificate of Incorporation of the Corporation. Also enclosed is an affidavit of the President of the Corporation, attesting that the Certificate of Incorporation documents provided herein are true, correct and complete.

NEW YORK

NEW JERSEY

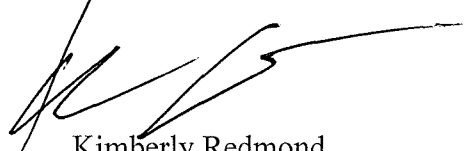
CONNECTICUT

August 23, 2023

Page 2

Please contact me at (203) 399-0514 or via e-mail at kredmond@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'Kimberly Redmond', written in a cursive style.

Kimberly Redmond
Paralegal

Cc: Barbara D. Knothe, Esq.

GARFUNKEL WILD, P.C.

Affidavit

STATE OF NEW YORK)
)
COUNTY OF Westchester)

The undersigned, Lindsay Farrell, President, being duly sworn, deposes and says:

1. I am the duly elected President of Open Door Family Medical Center, Inc. (the "Corporation"). The Corporation is a New York not-for-profit corporation located in Westchester County.
2. The documents enclosed herein, all of which comprise the Certificate of Amendment of the Certificate of Incorporation, the Restated Certificate of Incorporation, Certificate of Incorporation and all subsequent Amendments to the Certificate of Incorporation, have been examined by me and to the best of my knowledge and belief, the contents thereof are true, correct and complete.

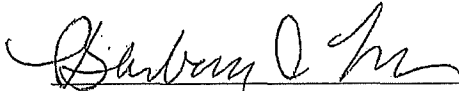
Dated: August 22, 2023



Name: Lindsay Farrell
Title: President

Sworn to before me this

22nd day of August, 2023



Notary Public

BARBARA A LUNA
NOTARY PUBLIC - STATE OF NEW YORK
Registration No. 01LU5046125
Qualified in Orange County
Commission Expires July 03, 2027

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

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
OPEN DOOR FAMILY MEDICAL CENTER, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President of Open Door Family Medical Center, Inc. hereby certifies:

1. The name of the corporation is OPEN DOOR FAMILY MEDICAL CENTER, INC. (the "Corporation"). The name under which the Corporation was formed was "OSSINING OPEN DOOR ASSOCIATES, INC."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on May 2, 1975 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on April 30, 1986, a Certificate of Amendment of the Certificate of Incorporation was filed on March 17, 1992, Certificate of Amendment of the Certificate of Incorporation was filed on December 27, 1999 and a Restated Certificate of Incorporation of the Corporation was filed on April 28, 2006.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

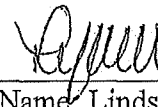
4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(1) of Section 801 of the NPCL: Paragraph THIRD of the Certificate of Incorporation, which provides the purposes of the Corporation is hereby deleted in its entirety and replaced as follows:

“THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

- A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury or physical condition;
- B. To establish, maintain and operate programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the resident to live within the community with a maximum degree of independence and privacy;
- C. To operate programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of such services, an Operating Certificate from the New York State Office of Mental Health and the corporation may not establish any such facility or program without first obtaining such Operating Certificate; and
- D. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

5. This Amendment of the Certificate of Incorporation of the Corporation was authorized at a meeting of the Board of Directors of the Corporation, held on April 24, 2023, at which a quorum was present and acting throughout.

Dated: August 22, 2023



Name: Lindsay Farrell
Title: President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

OPEN DOOR FAMILY MEDICAL CENTER, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

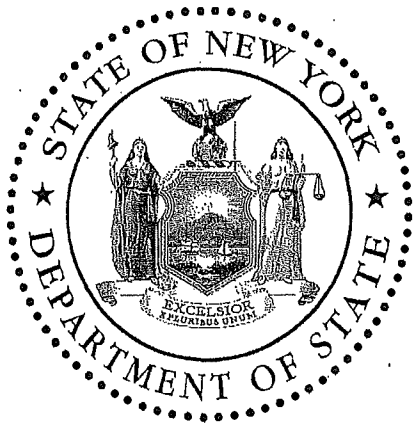
FILED BY:
KIMBERLY REDMOND, PARALEGAL
GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
350 BEDFORD STREET, SUITE 406A
STAMFORD, CT 06901

**Certificate of Incorporation and all
subsequent Amendments to the Certificate of
Incorporation**

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number A231009-15 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 August 18, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



The University of the State of New York

4221019

STATE OF NEW YORK: ; SS.
COUNTY OF ALBANY ;

Pursuant to the provisions of Section 216 of the Education Law and Section 404, subdivision (d) of the Not-For-Profit Corporation Law, consent is hereby given to the filing of the annexed certificate of incorporation of

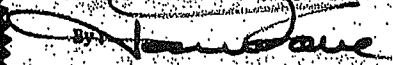
OSSINING OPEN DOOR ASSOCIATES, INC.
as a not-for-profit corporation.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 10th day of February, 1975.

Ewald B. Nyquist
Commissioner of Education

By: 
Robert D. Stone
Counsel and
Deputy Commissioner
for Legal Affairs



This consent to filing is granted with the understanding that nothing contained in the annexed certificate of incorporation shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 5 of Section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This consent to filing is granted with the further understanding that nothing contained in the certificate of incorporation shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to Section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of Section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of Section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of Section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to Section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

6

CERTIFICATE OF INCORPORATION

OF

OSSINING OPEN DOOR ASSOCIATES, INC.

Pursuant to Section 402 of the
Not-For-Profit Corporation Law

I, the undersigned, a natural person of the age of nineteen years or over, desiring to form a corporation pursuant to the provisions of the Not-For-Profit Corporation Law of the State of New York, hereby certify as follows:

FIRST: The name of the corporation is:

OSSINING OPEN DOOR ASSOCIATES, INC.

hereinafter sometimes called "the Corporation."

SECOND: That it is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B Corporation under Section 201. That its purposes are not for pecuniary profit or financial gain and no part of the income of the Corporation shall inure to the benefit of any member, director, 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, 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.

THIRD: The Corporation seeks to carry out the public objective of providing certain specified medical services, and to that end the purposes for which the Corporation is formed are:

To establish and maintain in the Village of Ossining, County of Westchester, an independent, out of hospital facility. To refer such persons where appropriate to licensed physicians and other licensed facilities. To disseminate educational and informational material on health care and preventive medicine. Nothing herein shall be construed as authorizing the Corporation to engage in the practice of medicine.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-For-Profit Corporation Law.

FOURTH: Subject to the limitations prescribed by the statute and in furtherance of its corporate purposes, the Corporation shall have the following powers, which shall not be deemed to be exclusive of any other powers provided by law:

To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated; to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated; to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ,

sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

To make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the Corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated, to lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

To be a member, associate or manager or other non-profit activities or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

To exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation.

In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 N-PCL subject to any limitations thereof contained in this Certificate of Incorporation, together with the power to solicit grants and contributions for its corporate purposes.

The Corporation will not charge a fee for any referral service of any kind or nature. The Corporation will not solicit or accept, directly or indirectly, funds from any medical facility or physician to whom it refers patients.

Nothing herein shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the Not-For-Profit Corporation Law Section 404 [b] - [p] or Executive Law, Section 757.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under Section 501 [c] [3] of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under Section 170[c] [2] of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws).

FIFTH: The Office of the Corporation in the State of New York is to be located in the Village of Ossining, County of Westchester, State of New York.

SIXTH: The territory in which the operations of the Corporation are principally to be conducted is the County of Westchester, State of New York, but the Corporation may do any one or more of the acts herein set forth as its purposes within or without the State of New York, the United States of America or in any part of the world.

SEVENTH: Nothing contained in the Certificate of Incorporation shall authorize the Company to carry on propaganda or otherwise attempt to influence legislations, or to participate in, or intervene in (including the publishing or distributing of statements), and political campaign on behalf of any candidate for public office.

EIGHTH: The names and addresses of the initial directors, until the first annual meeting of the Corporation are:

<u>NAME</u>	<u>ADDRESS</u>
Walter Brooks	130 Main Street Ossining, N. Y.
Toby Cosin	130 Underhill Rd. Ossining, N. Y.
Roland Crawford	14 Water St. Ossining, N. Y.
John Crutcher	8 Emwilton Pl. Ossining, N. Y.
Grace Edwards	28 State St. Ossining, N. Y.
Annette Gelfand	81 Macy Rd. Briarcliff Manor, N. Y.

7

NAMEADDRESS

Dorothy Goldman	Twin Ridges Rd. Ossining, N. Y.
Lewis Goldman	6 Cherry Hill Cir. Ossining, N. Y.
Leslie Grey	Pinesbridge Rd. Ossining, N. Y.
Dr. George Hill	30 State St. Ossining, N. Y.
Neville Horne	40 James St. Ossining, N. Y.
Denise Johnson	133 S. Highland Ave. Ossining, N. Y.
Elmer Jones	11 Independence Pl. Ossining, N. Y.
Benetta Morris	92 State St. Ossining, N. Y.
Martha Murray	76 State St. Ossining, N. Y.
Pat Ryan	64 Matthes Rd. Briarcliff Manor, N. Y.
Sylvia Schneer	Overlook Rd. Ossining, N. Y.
Al Slade	72 Hunter St. Ossining, N. Y.
Dot Stevens	172 Spring St. Ossining, N. Y.
Robert Sylvor.	605 Third Avenue New York, N. Y.
Dallas Tatum	91 State St. Ossining, N. Y.

8

<u>NAME</u>	<u>ADDRESS</u>
Henry Vess, Jr.	24 Meadowbrook Dr. Ossining, N. Y.
Andi Volpe	25 Grace Lane Ossining, N. Y.
Betty Woodward	136 Birch Rd. Briarcliff Manor, N. Y.
Marge Griesmer	Inningwood Rd. Ossining, N. Y.

NINTH: The address within the State to which the Secretary of State shall mail a copy of any notice required by law is c/o Robert Sylvor, 605 Third Avenue, County of New York and State of New York.

TENTH: Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or (b) by a corporation, contributions to which are deductible under Section 170 (c)(2) of such Code. Furthermore, for those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of such Code, the income of the Corporation shall be distributed at such time and in such manner as not to subject the Corporation to tax under Section 4942 of such Code, and the Corporation shall not engage in any act of self-dealing (as defined in Section 4941(d) of such Code), shall not retain any excess business holdings (as defined in

Section 4943(c) of such Code, shall not make any investments in such manner as to be subject to tax under Section 4944 of such Code, and shall not make any taxable expenditures (as defined in Section 4945(d) of such Code). In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c) 3 of the Internal Revenue Code of 1954 as amended, subject to an order of a Justice of the Supreme Court of the State of New York. All the foregoing references to sections of the Internal Revenue Code of 1954 are intended to apply to corresponding provisions of any future United States Internal Revenue Law.

ELEVENTH: Prior to delivery to the Department of State for filing, all approvals or consents required by law will be endorsed upon or annexed to this Certificate.

IN WITNESS WHEREOF, I hereunto sign my name and affirm that the statements made herein are true under the penalties of perjury, this 22nd day of January, 1975.



Robert Sylvester
605 Third Avenue
New York, N.Y. 10016

10

I, HON. HAROLD L. WOOD, a Justice
of the Supreme Court of the State of New York, NINTH
Judicial District, do hereby approve the annexed
Certificate of Incorporation of OSSINING OPEN DOOR
ASSOCIATES, INC.

Handwritten initials
Dated: April 23, 1975
White Plains, N.Y.

Handwritten signature: Harold L. Wood
Justice of the Supreme Court of the
State of New York, NINTH
Judicial District

HON. HAROLD L. WOOD
J.S.C.

Notice of Application (11/16/75)
(This is not to be deemed
approval or disapproval of the
Department of Agency of the
State of New York, nor is
authority of said department
otherwise limited by law.)

Dated: 4/16/75
LOUIS J. [unclear]
Attorney General

By: *Handwritten signature: H. J. Wallerstein*
Assistant Attorney General

13



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

April 7, 1975

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 4th day of April, 1975, I hereby certify that the Certificate of Incorporation of Ossining Open Door Associates, 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: Stephen C. Silverberg, Esq.
Bandler and Kass
605 Third Avenue
New York, New York 10016

Ossining Open Door Associates, Inc.
c/o First Baptist Church
Main Street
Ossining, New York 10562

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BARHR, M.D.
BLONEVA P. BOND
DEYLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
GERALD B. MANLEY, M.D.
GEORGE METCALF
JAMES F.X. O'ROURKE, M.D.
W. KENNETH RILAND, D.O.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
HOLLIS S. INORAHAM, M.D.
EX OFFICIO

EX OFFICIO

14

- 15

4231009

CERTIFICATE OF INCORPORATION

- OF -

OSSINING OPEN DOOR ASSOCIATES, INC.

4/29

Dated: January 22, 1975

Style B

STATE OF NEW YORK
 DEPARTMENT OF STATE
 TAX \$ 1000
 FILING FEE \$ 50
 FILED MAY - 2 1975
Handwritten signature
 Secretary of State
 By *Ans*

*P 60 It patches
Style B*

15

BANDLER & KASS

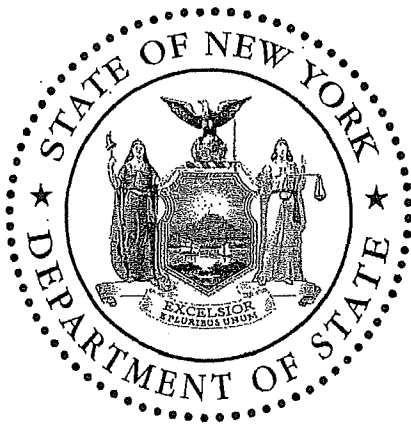
ATTORNEYS AT LAW

605 THIRD AVENUE • NEW YORK, N.Y. 10016

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number B352281-6 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 August 18, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
OSSINING OPEN DOOR ASSOCIATES, INC.
UNDER SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW

The undersigned being the President and Secretary
of Ossining Open Door Associates, Inc. hereby certify:

1. The name of the Corporation is Ossining Open Door Associates, Inc. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said Ossining Open Door Associates, Inc. was filed in the office of the Department of State on May 2, 1975. The said Corporation was formed under the Not-for-Profit Corporation Law.
3. The Ossining Open Door Associates, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is and remains a Type B corporation under Section 201 of said law, even though the corporate purposes are being changed as hereinafter set out.
4. Article Fourth of the Certificate of Incorporation of the Ossining Open Door Associates,

B352281

Inc. is hereby amended effective upon the execution and filing of a Certificate of Amendment

(a) to effect a change in the next to last

paragraph so that it reads in full as follows:

"Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the Not-For-Profit Corporation Law Section 404 [c] - [u].

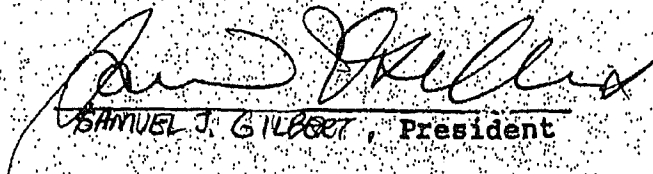
and (b) to add the following paragraph before the next to last paragraph as follows:


"To establish, maintain and operate within the County of programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the residents to live within the community with a maximum degree of independence and privacy."

5. The manner in which this Amendment of the Certificate of Incorporation was authorized was by the consent of a majority of the Board of Directors of Ossining Open Door Associates, Inc. voting in person at a meeting duly called; said meeting was held at the Ossining Open Door Associates, Inc., Main Street, Ossining, New York on January 15, 1986. There are no members eligible to vote.

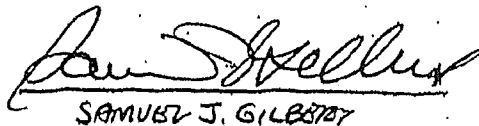
6. The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Marge Greismer, Scarborough Manor, Ossining, New York, 10510.

IN WITNESS WHEREOF, the undersigned have executed this certificate ^{as of} this 29th day of January, 1986.


SAMUEL J. GILBERT, President


KATHLEEN E. RAYMOND, Secretary

IN WITNESS WHEREOF, the undersigned affirm the statements contained herein as true under penalties of perjury and affirm that they have made and signed this certificate as of the 29th day of January, 1986.


SAMUEL J. GILBERT

3 
KATHLEEN E. RAYMOND

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 460-a of the Social Services Law and subdivision (b) of Section 804 of the Not-for-Profit Corporation Law, due inquiry and investigation having been made, approval hereby is given to the filing of the annexed proposed certificate of amendment of the certificate of incorporation of Ossining Open Door Associates, Inc.



IN WITNESS WHEREOF, this document is executed and the seal of the State Department of Social Services is affixed this 14th day of April, 1986.

Cesar A. Perales
Commissioner

By:

Corinne Plummer
Corinne Plummer
Deputy Commissioner
Division of Adult Services

I CONSENT TO THE FILING OF THE WITHIN AMENDMENT TO THE CERTIFICATE
OF INCORPORATION OF OSSINING OPEN DOOR ASSOCIATES, INC.

DATED: MARCH 14, 1986

Lucius Palk Bull
Justice of the Supreme Court

THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF SPECIAL
APPROVAL HEREON AND WAIVES
STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY
STATE OF NEW YORK

Allan E. Kirstein 3-13-86

ALLAN E. KIRSTEIN
Assistant Attorney General

8352284

16

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
OSSINING OPEN DOOR ASSOCIATES, INC..
UNDER SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 30 1986
AMT. OF CHECK \$ 30
FILING FEE \$ 20
TAX \$
COUNTY FEE \$
COPY \$
CERT \$
REFUND \$
SPEC HANDLE \$
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West
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TANNER GILBERT PROPP & STERNER
ATTORNEYS AT LAW
99 PARK AVENUE
NEW YORK, N.Y. 10016
(212) 986-7714

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number 920317000513 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 August 17, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

F920317000513

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
OSSINING OPEN DOOR ASSOCIATES, INC.
UNDER SECTION 803 OF THE NOT-FOR -PROFIT
CORPORATION LAW

The undersigned being the President and Secretary of Ossining Open Door Associates, Inc. hereby certify:

1. The name of the Corporation is Ossining Open Door Associates, Inc. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said Ossining Open Door Associates, Inc. was filed in the office of the Department of State on May 2, 1975. The said Corporation was formed under the Not-For-Profit Corporation Law.
3. The Ossining Open Door Associates, Inc. is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Ossining Open Door Associates, Inc. is and remains a Type B Corporation under Section 201 of said law, even though the corporate purposes are being changed as hereinafter set out.
5. Article Fourth of the Certificate of Incorporation of the Ossining Open Door Associates, Inc. is hereby amended effective upon the execution and filing of this Certificate of Amendment (a) to effect a change in the next to last paragraph so that it reads in full as follows:

1

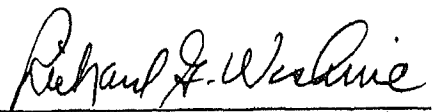
"Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the Not-For-Profit Corporation Law Section 404 [c]-[t]."

and (b) to add the following paragraph before the next to last paragraph as follows:


"To operate a substance abuse program within the meaning of Article 19 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto as each may be amended from time to time."

6. The manner in which this Amendment of the Certificate of Incorporation was authorized was by the consent of a majority of the Board of Directors of Ossining Open Door Associates, Inc. voting in person at a meeting duly called: said meeting was held at the Ossining Open Door Associates, Inc., Main Street, Ossining, New York on October 9, 1991. There are no members eligible to vote.
7. The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Marge Greismer, 78 Valeria, Peekskill, New York 10566.

IN WITNESS WHEREOF, the undersigned have executed this certificate as of this 9th day of October, 1991.


Richard G. Wishnie, Vice President


EDGAR E. PYATT, PRESIDENT

2 
REGINA J. BERTA
SECRETARY

IN WITNESS WHEREOF, the undersigned affirm the statements
contained herein as true under penalties perjury and affirm that they have
made and signed this certificate as of the 9th day of October, 1991.

Richard G. Wishnie
Richard G. Wishnie,
Vice President

Regina T. Berta
Regina T. Berta, Secretary

State of New York
Division of Substance Abuse Services
Albany, New York

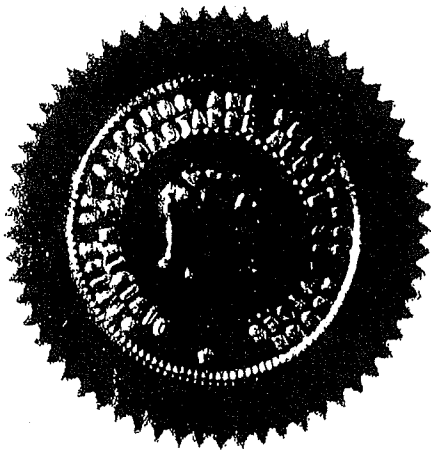
Know All Persons By These Presents:

Pursuant to the provisions of Paragraph (U) of Section 404 of the Not-For-Profit Corporation Law, consent is hereby given to the filing with the Department of State of the annexed:

Certificate of Amendment
Of The
Certificate of Incorporation
Of
Ossining Open Door Associates, Inc.

Under Section 803 of the Not-For-Profit Corporation Law

This consent to filing shall in no way be construed as an authorization for the corporation to operate a substance abuse program for which a certificate of approval may be necessary pursuant to the provisions of Mental Hygiene Law, Section 23.01.



IN WITNESS WHEREOF this instrument is executed and the Seal of the State Division of Substance Abuse Services is affixed this 25th day of *October, 1991.*

Arthur Y. Webb
Director

By: *A. Thomas Storace*

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

NO OBJECTION TO JUDICIAL APPROVAL AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

by:

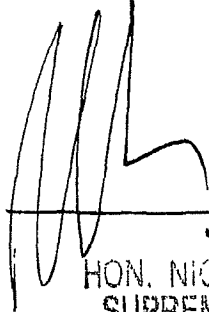
ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

by *Laura Werner*
December 11, 1991
ASSISTANT ATTORNEY GENERAL

Date: _____

I, **HON. NICHOLAS COLABELLA**
SUPREME COURT JUSTICE, a Justice of the Supreme Court of the State of New York for the *Ninth* Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of *Ossining Open Door Associates, Inc.* and consent that the same be filed.

Date: *1/27/92*



JSC
HON. NICHOLAS COLABELLA
SUPREME COURT JUSTICE

F920817000513

CERTIFICATE OF AMENDMENT

OF
Ossining OPEN DOOR Associates, Inc.

Under section 803 of the ~~Not-For-Profit~~ Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 17 1992

TAX \$

none

BY:

PE
WEST

Filed by:

OPEN DOOR Family Health Center
165 Main Street
Ossining NY 10562

6

920817000553

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number 991227000180 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 August 17, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

F-9912270001FO

The
 University of the Education  State of New York
 Department

STATE OF NEW YORK :
 : SS.:
 COUNTY OF ALBANY :

In accordance with the provisions of section 805 of the Not-for-Profit Corporation Law, consent is hereby given to the change of name of **OSSINING OPEN DOOR ASSOCIATES, INC.** to **OPEN DOOR FAMILY MEDICAL CENTER, INC.** contained in the annexed certificate of amendment of the certificate of incorporation.

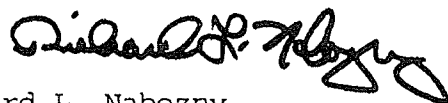
This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

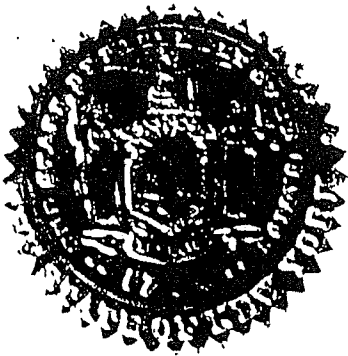
IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 26th day of October, 1999.

Richard P. Mills
 Commissioner of Education

By:



Richard L. Nabozny
 Senior Attorney



1

This consent to filing is granted with the understanding that nothing contained in the annexed corporate document shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services, nor shall the corporation provide home care services, hold itself out as or call itself a home health services agency, a home health agency or a home care services agency unless or until the corporation is approved pursuant to Article 28 of the Public Health Law.

This consent to filing is granted with the further understanding that nothing contained in the annexed corporate document shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a business school in accordance with the provisions of section 5001 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents for the operation of a private school pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

2

F991227000100

Certificate of Amendment of the Certificate of Incorporation of

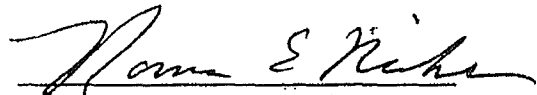
Ossining Open Door Associates, Inc.
under Section 803 of the Not-for-Profit Corporation Law

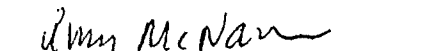
IT IS HEREBY CERTIFIED THAT:

- (1) The name of the corporation is Ossining Open Door Associates, Inc.
- (2) The certificate of incorporation was filed by the Department of State on the 2nd day of May 1975. Ossining Open Door Associates, Inc. was formed under the Not-For-Profit Corporation Law and is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is and remains a Type B corporation under Section 201 of said law.
- (3) Article First of the certificate of incorporation is hereby amended to read:

The name of the corporation is: Open Door Family Medical Center, Inc.
- (4) The amendment to the certificate of incorporation was authorized by a unanimous vote of the Membership of the corporation.
- (5) The corporation designates the Secretary of State as agent for service of process. The address within the State to which the Secretary of State shall mail a copy of any process against it may be served upon him is The Corporation at, 165 Main Street, Ossining, New York, 10562

IN WITNESS WHEREOF, this certificate has been subscribed this 17th day of June, 1998 by the undersigned who affirm that statements made herein are true under the penalties of perjury.


Norman E. Nichols, Chairperson


Amy McNamara, Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 29th day of January, 1999, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Ossining Open Door Associates, Inc., hereafter to be known as Open Door Family Medical Center, Inc., dated June 17, 1998.

14



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

February 9, 1999

Stephanie B. Kosmos
Kellner, Chehebar & Deveney
One Madison Avenue
New York, New York 10010

Re: Certificate of Amendment of Certificate of Incorporation of Ossining Open Door Associates, Inc.

Dear Ms. Kosmos:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 29th day of January, 1999, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Ossining Open Door Associates, Inc., hereafter to be known as Open Door Family Medical Center, Inc. dated June 17, 1998 is approved.

Sincerely,

Karen S. Westervelt
Executive Secretary

5

**STATE OF NEW YORK
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES
ALBANY, NEW YORK**

KNOWN ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Section 32.31 of the Mental Hygiene Law, and Section 803 and paragraph (u) of Section 404 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment of the Certificate of Incorporation of

OSSINING OPEN DOOR ASSOCIATES, INC.

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate issued by the Office of Alcoholism and Substance Abuse Services unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for said corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for the issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 25TH day of OCTOBER, 1999



ELLIOTT LEFKOWITZ
Assistant Director
Project Review Unit

Elliott Lefkowitz



New York State
Office of
Children & Family
Services

December 14, 1999

George E. Pataki
Governor

John A. Johnson
Commissioner

Eugene F. Getty, Esq.
KELLNER, CHEHEBAR & DEVENEY
One Madison Avenue
New York, New York 10010

Re: Ossining Open Door Associates, Inc.
Name is being changed to Open Door Family Medical Center, Inc.

Dear Mr. Getty:

Riverview Center-6th Floor

40 North Pearl Street
Albany, New York 12243

This letter is in reply to your letter of October 17, 1999, under cover of which you submitted a certificate of amendment of the certificate of incorporation of the above named corporation for our review.

The amendment in question appears to confine itself to the above-mentioned change of name. This corporation does not appear to currently involve itself with any of the activities which come under the auspices of this Office. The amendment, therefore, does not require the approval of the New York State Office of Children and Family Services.

This letter should not be construed as an indication that further amendments will not require this Office's approval.

You may send the executed original certificate of amendment of the certificate of incorporation to the Secretary of State together with this letter, and if it is otherwise in proper form and all required approvals are attached, it should be accepted for filing.

Very truly yours,

Gloria A. Lekki-Macri
Assistant Counsel
House Counsel



1991227000180

Certificate of Amendment of the
Certificate of Incorporation of

Ossining Open Door Associates, Inc.

under Section 803 of the Not-for-Profit Corporation Law

West

Filed By: Kellner, Chehebar & Deveney
One Madison Avenue, 29th Flr.
New York, New York 10010
(212) 889-2121

1.c.c
STATE OF NEW YORK
DEPARTMENT OF STATE
DEC 27 1999

not
west

8

991227000186

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number 060428000221 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 August 17, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

NCR-26
x/5602

060428000 22

QC

RESTATED CERTIFICATE OF INCORPORATION

OF

OPEN DOOR FAMILY MEDICAL CENTER, INC.

Under Section 805 of the New York Not-for-Profit Corporation Law

RECEIVED
APR 03 2006
CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

FILED
AND
ENTERED
ON 4-13-2006
WESTCHESTER
COUNTY CLERK

I, the undersigned, being the Chairperson of OPEN DOOR FAMILY MEDICAL CENTER, INC., (hereinafter the "Corporation") do hereby certify:

1. The name of the Corporation is OPEN DOOR FAMILY MEDICAL CENTER, INC. The Corporation was formed under the name Ossining Open Door Associates, Inc.

2. The Corporation's certificate of incorporation was filed by the New York State Department of State on May 2, 1975.

3. The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the Not-For-Profit-Corporation Law (the "N-PCL"):

a. Article SECOND setting out, *inter alia*, the definition of the Corporation under the Not-for-Profit Corporation Law and the general prohibition on inurement is amended to read in its entirety as follows:

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of § 102 of the Not-For-Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

b. Article THIRD setting out the purposes of the Corporation is amended to read in its entirety as follows:

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

A) To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition;

To establish, maintain and operate programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the residents to

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APR 13 2006
TIMOTHY G. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

live within the community with a maximum degree of independence and privacy; and

- C. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities not otherwise authorized or approved pursuant to N-PCL §404(a)-(v).

- c. Article **FOURTH** setting forth the powers of the Corporation is amended to read in its entirety as follows:

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general and special powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall be authorized to accept subventions from members or non-members on terms and conditions not inconsistent with the N-PCL, and to issue certificates therefor. Such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of N-PCL § 505. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes set forth in Article **THIRD** hereof or necessary or incidental to the powers so conferred or conducive to the furtherance thereof.

- d. Article **SIXTH**, designating the territory in which the operations of the Corporation are to be principally conducted, is deleted and replaced by the following:

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article **THIRD** hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article **ELEVENTH**.

- e. Article **SEVENTH**, setting forth the limitation on the Corporation with respect to carrying on propaganda and otherwise influencing legislation is hereby amended to read in its entirety, as follows:

SEVENTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C.

§ 501(c)(3). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

f. Article NINTH, designating the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is amended to read in its entirety as follows:

NINTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Open Door Family Medical Center, Inc.
165 Main Street
Ossining, New York 10562 Att: Lindsay Farrell

g. Article TENTH setting forth certain limitations of Corporation, with respect to the I.R.C. is amended to read in its entirety as follows:

TENTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under § 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as "I.R.C."), as an organization described in I.R.C. § 501(c)(3), and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2). In any year in which the Corporation is a private foundation as defined in I.R.C. § 509, (i) it will distribute such amounts for such taxable year at such time and in such manner as not to be subject to the excise tax on undistributed income under I.R.C. § 4942, (ii) it will not engage in any act of self-dealing that is subject to the excise tax under I.R.C. § 4941, (iii) it will not retain any excess business holdings that are subject to tax under I.R.C. § 4943, (iv) it will not make any investments that subject it to tax under I.R.C. § 4944 and (v) it will not make any taxable expenditures that are subject to the tax under the I.R.C. § 4945.

h. Article ELEVENTH, setting forth the procedures for approvals and consents for filing amendments to the Certificate of Incorporation as required under the law and regulations is deleted and replaced by the following:

ELEVENTH: Upon the dissolution of the Corporation, its Board of Directors, after paying or making provision for the payment of all of the liabilities

of the Corporation, and subject to providing prior notice to the New York State Attorney General, obtaining the approval of the Supreme Court of the State of New York, and complying with the laws of the State of New York, shall distribute or arrange for the distribution of all of the assets of the Corporation to any one or more organizations which then are (i) described in I.R.C. § 501(c)(3), and classified as a public charity pursuant to I.R.C. § 509(a) and the Treasury Regulations promulgated thereunder, and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2).

4. The text of the certificate of incorporation is hereby restated as amended to read herein set forth in full:

FIRST: The name of the Corporation is OPEN DOOR FAMILY MEDICAL CENTER, INC. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of § 102 of the Not-For-Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

- A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition;
- B. To establish, maintain and operate programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the residents to live within the community with a maximum degree of independence and privacy; and
- C. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities not otherwise authorized or approved pursuant to N-PCL §404(a)-(v).

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general and special powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall be authorized to accept subventions from members or non-

members on terms and conditions not inconsistent with the N-PCL, and to issue certificates therefor. Such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of N-PCL § 505. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred or conducive to the furtherance thereof.

FIFTH: The office of the Corporation in the State of New York is to be located in the Village of Ossining within the County of Westchester.

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article ELEVENTH.

SEVENTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the "I.R.C."). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

EIGHTH: The names and addresses of the initial directors, until the first annual meeting of the Corporation are:

NAME	ADDRESS
Walter Brooks	130 Main Street Ossining, NY
Toby Cosin	130 Underhill Rd. Ossining, NY
Roland Crawford	14 Water St. Ossining, NY

NAME	ADDRESS
John Crutcher	8 Emwilton Pl. Ossining, NY
Grace Edwards	28 State St. Ossining, NY
Annette Gelfand	81 Macy Rd. Briarcliff Manor, NY
Dorothy Goldman	Twin Ridges Rd. Ossining, NY
Lewis Goldman	6 Cherry Hill Cir. Ossining, NY
Leslie Gray	Finesbridge Rd. Ossining, NY
Dr. George Hill	30 State St. Ossining, NY
Neville Horne	40 James St. Ossining, NY
Denise Johnson	133 S. Highland Ave. Ossining, NY
Elmer Jones	11 Independence Pl. Ossining, NY
Benetta Morris	92 State St. Ossining, NY
Martha Murray	76 State St. Ossining, NY
Pay Ryan	64 Matthes Rd. Briarcliff Manor, NY
Sylvia Schneer	Overlook Rd. Ossining, NY
Al Slade	72 Hunter St. Ossining, NY
Dot Stevens	172 Spring St. Ossining, NY
Robert Sylvor	605 Third Avenue New York, NY
Dallas Tatum	91 State St. Ossining, NY

NAME	ADDRESS
Henry Vess, Jr.	24 Meadowbrook Dr. Ossining, NY
Andi Volpe	25 Grace Lane Ossining, NY
Betty Woodard	136 Birch Rd. Briarcliff Manor, NY
Marge Griesmer	Immingwood Rd. Ossining, NY

NINTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Open Door Family Medical Center, Inc.
165 Main Street
Ossining, New York 10562 Att: Lindsay Farrell

TENTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under I.R.C. § 501(a), as an organization described in I.R.C. § 501(c)(3), and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2). In any year in which the Corporation is a private foundation as defined in I.R.C. § 509, (i) it will distribute such amounts for such taxable year at such time and in such manner as not to be subject to the excise tax on undistributed income under I.R.C. § 4942, (ii) it will not engage in any act of self-dealing that is subject to the excise tax under I.R.C. § 4941, (iii) it will not retain any excess business holdings that are subject to tax under the I.R.C. § 4943, (iv) it will not make any investments that subject it to tax under I.R.C. § 4944 and (v) it will not make any taxable expenditures that are subject to the tax under the I.R.C. § 4945.

ELEVENTH: Upon the dissolution of the Corporation, its Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, and subject to providing prior notice to the New York State Attorney General, obtaining the approval of the Supreme Court of the State of New York, and complying with the laws of the State of New York, shall distribute or arrange for the distribution of all of the assets of the Corporation to any one or more organizations which then are (i) described in I.R.C. § 501(c)(3), and classified as a public charity pursuant to I.R.C. § 509(a) and the Treasury

Regulations promulgated thereunder, and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2).

5. The amendments and restatement of this Certificate of Incorporation of the Corporation were authorized at a meeting of the board of directors of Open Door, Inc., the sole member of the Corporation, held on January 18, 2005. A quorum was present of the Open Door, Inc. board of directors was present.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and hereby affirms it as true under penalties of perjury this 18th day of January, 2006.

Walter Edge

Name: Walter Edge
Chairperson

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE

ELIOT L. SPITZER

ATTORNEY GENERAL STATE OF NEW YORK

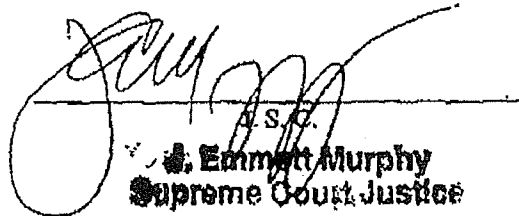
By: _____

Dated: _____

* * * * *

I, _____, the undersigned Justice of the Supreme Court of the State of New York, County of Westchester, do hereby approve the foregoing Restated Certificate of Incorporation of OPEN DOOR FAMILY MEDICAL CENTER, INC. pursuant to Section 804(a)(ii) of the Not-For-Profit Corporation Law and consent that the same be filed.

At the Ex Parte Term of the Supreme Court of the State of New York, held in and for the County of Westchester on _____, 2006.


J. S. C.
Emmett Murphy
Supreme Court Justice

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE, SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.
Veronica P. M. Cady 3/28/06
ASSISTANT ATTORNEY GENERAL DATE



NEW YORK STATE
OFFICE OF ALCOHOLISM
AND
SUBSTANCE ABUSE SERVICES
1450 Western Avenue
Albany, New York 12203-3526

MAR 7 2006

March 3, 2006

Ms. Alice Walker Leaman
Manatt, Phelps & Phillips, LLP
121 State Street
Albany, New York 12207

Re: Restated Certificate of Incorporation – Open Door Family Medical Center, Inc.
(#025-2005CP)

Dear Ms. Walker Leaman:

The enclosed proposed Certificate of Incorporation has been reviewed. Since it is not the purpose of Open Door Family Medical Center, Inc. to provide alcoholism, substance abuse, or chemical dependence treatment services, the consent of the Commissioner of the New York State Office of Alcoholism and Substance Abuse Services (OASAS) is not required.

For your information, if alcoholism, substance abuse and/or chemical dependence treatment services were to be provided directly by this Corporation, pursuant to Article 32 of the Mental Hygiene Law, approval of an OASAS operating certificate and incorporation papers would be required.

Sincerely,

Virginia Martin
Virginia Martin
Director, Bureau of Certification

Enclosure

cc: (w/o enc.) Mark Boss
Scott Brady



STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

FEB 12 2006

Albany, New York

Manatt, Phelps, & Phillips, LLP
Attn: Alice Walker Leaman
121 State Street, 3rd Floor
Albany, NY 12207

Re: OPEN DOOR FAMILY MEDICAL CENTER, INC.

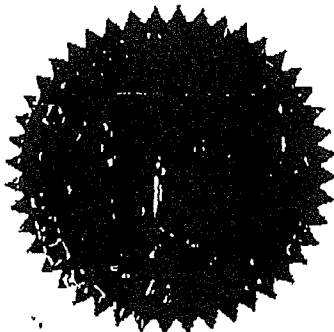
Dear Ms. Leaman:

Consent is hereby given to the filing of the annexed restated Certificate of Incorporation of the OPEN DOOR FAMILY MEDICAL CENTER, INC., pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State or New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

RICHARD P. MILLS
Commissioner of Education



By: *Susan A. Naccarato*
Richard L. Nabozny
or Susan A. Naccarato
(Commissioner's designee)

Feb. 9, 2006
Date

12



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

"REVISED LETTER"

February 1, 2006


Mr. Michael A. Lehmann
Manatt, Phelps & Phillips, LLP
7 Times Square, 23rd Floor
New York, New York 10036

Re: Restated Certificate of Incorporation of Open Door Family Medical Center, Inc.

Dear Mr. Lehmann:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 24th day of June, 2005, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of Open Door Family Medical Center, dated January 18, 2006.

Sincerely,


Donna W. Peterson
Executive Secretary

/md

NCR-26

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2006 APR 27 PM 4:02

RESTATED
CERTIFICATE OF INCORPORATION

OF

OPEN DOOR FAMILY MEDICAL CENTER, INC.

UNDER SECTION 805 OF THE
NOT-FOR-PROFIT CORPORATION LAW

mk

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE

APR 28 2006

FILED
TAXS
BY: MKK

West.

RECEIVED
2006 APR 27 PM 12:13

Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036

2006 APR 28 AM 11:20

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DRAWDOWN

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Amended and Restated By-laws

Of

Open Door Family Medical Center, Inc.

ARTICLE I. NAME, PURPOSES, OFFICES, AND MISSION

Section 1.01 Name.

The name of the Corporation shall be Open Door Family Medical Center, Inc. (hereinafter, the "Corporation" or the "Health Center").

Section 1.02 Purposes.

The purposes of this Corporation shall be as set forth in its Certificate of Incorporation.

Section 1.03 Offices.

The location of the principal office of the Corporation shall be in the County of Westchester, State of New York, or at such other location within the State of New York as the Board of Directors (sometimes referred to herein as the "Board") may designate.

Section 1.04 Mission.

The mission of the Corporation shall be to provide primary and preventive health care services to the residents of its service area (the "Corporation's Service Area"), with a particular focus on low-income, medically underserved individuals.

ARTICLE II. MEMBERSHIP

Section 2.01 Members.

The Corporation shall not have any members.

ARTICLE III. BOARD OF DIRECTORS

Section 3.01 Powers and Authority.

- (a) The Board shall manage and control the property, business and affairs of the Corporation and have oversight of the Health Center Program project. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-laws, or the laws of the State of New York shall be and hereby are vested in and shall be exercised by the Board, whose members (each a "Director") shall meet the requirements of 42 C.F.R. § 51c.304, as amended from time to time, as set forth below in more detail in Section 3.04 of this Article IV. The Board shall have full power to adopt rules and regulations governing all actions which it takes, except as otherwise provided by the laws of the State of New York or by Federally Qualified Health Center ("FQHC") requirements, and shall have full authority with respect to the distribution and payment of monies received by the Corporation from time to time.
- (b) No individual, entity or committee (other than the Executive Committee in emergency situations for items on which the Board will subsequently vote) shall have the right to reserve approval authority or have veto power over the Board with regard to the Board's required authorities and functions.
- (c) In the event the Health Center collaborates with other entities in fulfilling the Health Center's HRSA-approved scope of project, such collaboration or agreements with the other entities shall not restrict or infringe upon the Board's required authorities and functions.

Section 3.02 Duties and Responsibilities.

The responsibilities of the Board of the Corporation shall include, but shall not be limited to, the following:

- (a) Hold regularly scheduled meetings, at least once each month, for which minutes, which include attendance, key actions and decisions, shall be kept;
- (b) Set the objectives and goals for the Corporation, and define the Corporation's role in meeting the health needs of the community it serves;
- (c) Evaluate the performance of the Health Center, including evaluations based on quality assurance/quality improvement assessments and other information received from Health Center management, and ensuring appropriate follow-up actions are taken regarding (a) achievement of projects, (b) service utilization patterns, (c) quality of care, (d) efficiency and effectiveness of the Health Center, and (e) patient satisfaction, including addressing any grievances;
- (d) Establish/Adopt policies for the conduct of the Health Center Program project and for updating these policies when necessary. These policies include the items listed in Sections 3.02(e), (i) – (l) below.
- (e) Establish health care policies, including (a) scope and availability of services within the Health Center Program project and decisions to subaward or contract for a substantial portion of the services, (b) service site locations and (c) hours of operation of service sites;
- (f) Assess achievement of project objectives through evaluation of Health Center activities, including service utilization patterns, quality of care, productivity (efficiency and effectiveness of the Health Center), and patient satisfaction;
- (g) Ensure that a process is developed for hearing and resolving patient grievances;
- (h) Assure major equipment and facilities are provided consistent with objectives, plans and community needs;
- (i) Establish and maintain general personnel policies for the Health Center including those addressing selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;
- (j) Adopt policies for financial management practices and a system to ensure accountability for Health Center resources, including periodically reviewing the financial status of the Health Center and the results of the annual audit to ensure appropriate follow-up actions are taken, providing for adequate financing, maintaining the fiscal soundness of the Corporation and managing its operating funds and investments;
- (k) Adopt and update a policy for eligibility for services including criteria for partial payment schedules;
- (l) Adopt and evaluate at least every three (3) years and, as needed, approve updates to policies in the following areas: (a) Sliding Fee Discount Program, (b) Quality Improvement/Assurance ((i) quality and utilization of Health Center services, (ii) patient satisfaction and patient grievance processes and (iii) patient safety, including adverse events), (c) Billing and Collections (which address, without limitation (x) the specific circumstances where the Health Center will waive or reduce fees based on the patients' inability to pay and (y) limitation of services based on refusal to pay, if applicable), (d) Financial Management, (e) Accounting Systems, and (f) Personnel;
- (m) Approve the annual Health Center Program project budget, which outlines the proposed used of both the Health Center Program award and non-Federal resources and revenues;
- (n) Oversee the development of the overall plan for the Health Center Program project;
- (o) Provide direction for and conduct long-range/strategic planning at least once every three (3) years, including, but not limited to, identifying Health Center priorities and adopting a three (3) year plan for financial management and capital expenditures;

- (p) Oversee the Health Center's management through (a) approving the selection and dismissal of the Chief Executive Officer of the Corporation, who shall act as an agent of the Board and report to the Board, (b) holding the Chief Executive Officer accountable for (x) the implementation of policies and practices and (y) oversight of other key management of the Health Center in carrying out the day-to-day activities necessary to fulfill the HRSA-approved scope of project and (c) periodically evaluating the Chief Executive Officer's performance;
- (q) Assure that the Health Center is operated in compliance with applicable Federal, State, and local laws and regulations, including, without limitation, all requirements applicable to FQHCs;
- (r) Approve the Corporation's annual Section 330 grant application, other applications related to the Section 330 project, and other requests related to the Corporation's Section 330 scope of project;
- (s) Plan for the organization's long term future;
- (t) Adopt and periodically review these By-laws, with any amended and restated versions of the By-laws being signed by a duly qualified officer of the Corporation;
- (u) Adopt and periodically review the Corporation's Conflict of Interest Policy (which shall include written standards relating to procurements) and annually complete a Conflict of Interest Disclosure Form;
- (v) Annually (a) review the risk management report and evaluate (i) completed risk management activities, (ii) status of the Corporation's performance relative to established risk management goals, and (iii) proposed risk management activities that relate and/or respond to identified areas of high organizational risk and (b) review documentation showing that any related risk management follow-up actions have been implemented;
- (w) Establish and require compliance with a corporate compliance program and a HIPAA compliance program; and
- (x) Purchase, sell, mortgage or lease real property of the Corporation; provided that such property does not constitute all or substantially all of the assets of the Corporation. In the event such action involves all or substantially all of the assets of the Corporation, such action shall require an affirmative vote of two thirds (2/3) of the entire Board (or a majority of the entire Board if there are 21 or more directors).

Section 3.03 Number.

The Board of Directors shall consist of not less than nine (9) but no more than twenty-five (25) members. The precise number shall be fixed by the Board from time to time.

Section 3.04 Composition.

- (a) Consumer Directors. A majority of the Directors shall be individuals who are registered patients of the Health Center (the "Consumer Directors") who have received, in the prior twenty-four (24) months, at least one (1) in-scope service that generated a visit at an in-scope site of the Health Center and who, as a group, represent the individuals being or to be served in terms of demographic factors such as race, ethnicity and gender.
- (b) Non-Consumer Directors. No more than one half of the remaining Directors (the "Non-Consumer Directors") may be persons who derive more than ten (10%) percent of their annual income from the health care industry, which shall mean individuals who receive their income from the provision of direct billed medical care to patients. The Non-Consumer Directors shall be representative of the community served by the Health Center or the Health Center's service area and shall be selected for their expertise in areas such as community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within the community.

- (c) No Director or Officer shall be an employee of the Corporation or spouse or child, parent, brother or sister by blood marriage or adoption of such an employee. The Chief Executive Officer shall serve as an ex-officio, non-voting director.

Section 3.05 Election.

- (a) The Board of Directors shall be elected by a majority vote of the Board of Directors at the annual meeting (in the event of vacancies or Directors' terms expiring) of the Board and shall serve for two consecutive years and/or until their successors are elected and/or qualified. The elected Directors shall be divided into two classes, each of which consists of one half (or as near as possible) of the total number of elected Directors.
- (b) The selection of Directors shall be accomplished in the following manner:
- (1) Officers and Directors of the Corporation as well as interested individuals shall forward names and resumes of possible candidates to the Executive Committee or such other committee as the Board may create from time to time. The Committee shall review the resumes and conduct interviews with candidates from the names offered. Thereafter, the Committee shall submit its Nomination Slate for a vote by the Board.
- (c) No entity, committee or individual (other than the Board) shall be permitted to select the Board Chairperson or the majority of the Directors, including a majority of the Non-Consumer Directors.

Section 3.06 Vacancies.

Any vacancy on the Board of Directors, occasioned by death, resignation or removal, shall be filled by a majority vote of the Board at any meeting of the Board of Directors, unless otherwise required by the law, the Certificate of Incorporation, or these By-laws. A Director elected to fill a vacancy shall serve for the unexpired term of his/her predecessor in office and until his successor shall have been elected, qualified and assumed office. In filling vacancies, elections shall be made in a manner that assures compliance with Federal regulations regarding Board composition and with Section 3.04.

Section 3.07 Removal.

Any Director may at any time be removed, with or without cause, by vote of the majority of the Directors then in office at a special meeting called for such purpose at which a quorum consisting of at least a majority of the Directors is present. Cause for removal shall include, but not be limited to, if a Director has missed three (3) consecutive regular Board meetings, or fails to participate in the work of assigned Board Committee (except for cause accepted by the Board).

Section 3.08 Resignation.

A Director may resign by providing written notice to the Chairperson. Such resignation shall be effective upon receipt, or upon any subsequent time set forth in the notice of resignation.

Section 3.09 Annual Meetings.

The Board of Directors shall hold an annual meeting on the third Wednesday in the month of May (or on such other date and time as determined by the Board from time to time) for the purpose of selecting officers and Directors and for the transaction of any other business which be properly brought before the meeting. No notice of such annual meeting need be given unless the date and time is changed from that set forth above.

Section 3.10 Regular Meetings.

Regular meetings of the Board of Directors shall be held monthly at such time and place as shall be fixed by the Board of Directors. Meetings shall be held at the offices of the Corporation or at such other place as may be designated by the Chairperson pursuant to written notice to each Director. Notwithstanding the foregoing, regular meetings may be held without notice if done pursuant to a schedule of regular meetings established by the Board.

Section 3.11 Special Meetings.

Special meetings of the Board may be called by the Chairperson, or by written demand signed by three (3) Directors. Notice of the time and place of such meeting shall be given at least twenty-four (24) hours prior to the meeting by a method determined by the Board. All notices shall set forth the place, the date, the time and the purpose of the meeting. No business other than that specified in the Notice of the Special Meeting shall be transacted at such meeting.

Section 3.12 Waiver of Notice.

No notice of any meeting of the Board of Directors need be given to any Director who attends such meeting without protesting prior to or at the commencement of the meeting the lack of notice of such meeting, or to any Director who submits, via paper form, email or facsimile, a signed waiver of notice whether before or after the meeting.

Section 3.13 Quorum: Voting.

At any duly called meeting of the Board of Directors, a majority of the entire Board shall constitute a quorum. Any corporate action to be taken by vote of the Board of Directors shall be authorized by a majority of the votes cast at a duly held meeting at which a quorum is present, unless the law, the Certificate of Incorporation, or these By-laws require a different number.

Section 3.14 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 to such action. Such consent may be written or electronic. Such 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 so to act. Such statement shall be prima facie evidence of such authority.

Section 3.15 Participation by Telephonic Conference.

Any one (1) or more of the Directors who is not physically present at a meeting of the Board or any Committee thereof may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at the meeting 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.

Section 3.16 Compensation.

Directors shall serve without compensation for serving as Directors. Directors shall be allowed reimbursement for reasonable expenses, upon resolution of the Board.

ARTICLE IV. EXECUTIVE OFFICERS

Section 4.01 Officers of the Board of Directors.

The officers of the Board are Chairperson, Vice-Chairperson, Secretary and Treasurer who shall be elected from the members of the Board of Directors by written ballot at the annual meeting as described in Section 3.09.

Section 4.02 Terms of Office, Vacancies and Removal of Officers.

The terms of office of the Officers of the Board of the Corporation shall be one (1) year or until their successors are elected and qualified and assume office. Any Officer may be removed, with or without cause, by a majority vote of the Board of Directors at a duly held meeting at which a quorum is present. The Board of Directors may at any meeting fill any Board vacancy for the unexpired term of the specified vacancy, which occurs in any office of the Corporation.

Section 4.03 The Chairperson.

The Chairperson shall preside at all meetings of the Board of Directors of the Corporation. The Chairperson shall have the authority, along with any other officers authorized by the Board of Directors, to sign on behalf of the Corporation, deeds, mortgages, bonds, contracts or other instruments approved by the Board for execution. The

Chairperson shall appoint the members of, and may alter the composition of, the Committees of the Board. In addition, the Chairperson shall perform such other duties as the Board of Directors shall require.

Section 4.04 The Vice-Chairperson.

The Vice-Chairperson shall perform such duties as may be requested by the Chairperson and shall preside as Chairperson in the absence of the Chairperson. In the event of the Chairperson's death, resignation, removal, incapacity, or refusal to act, the Vice-Chairperson shall succeed him and shall serve for the remainder of the term of his immediate predecessor, until and unless the Board of Directors shall fill such vacancy pursuant to Sections 4.01 and 4.03 of these By-laws.

Section 4.05 Secretary.

The Secretary shall, with the assistance of appropriate Corporation staff, 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; and shall perform all other duties incident to the office of Secretary.

Section 4.06 Treasurer.

The Treasurer shall, with the assistance of the Chief Financial Officer, be responsible for and coordinate all financial and related activities of the Corporation; shall render to the Board of Directors as the same may be required, an account of all transactions of the Treasurer and the of the financial condition of the Corporation; shall present the annual budget to the Board of Directors; and shall perform all other duties incident to the office of Treasurer.

Section 4.07 President and Chief Executive Officer.

The President shall be the Chief Executive Officer of the Corporation and as such, shall carry out the purposes of the Corporation pursuant to general and specific assignments given by the Board of Directors or the Executive Committee. The President shall be responsible for the daily conduct of all Corporation activities and programs as well as the supervision of all employees of the Corporation. The President shall be a full-time employee of the Corporation and shall be an ex-officio non-voting member of the Board of Directors.

Section 4.08 Compensation.

Officers shall not receive compensation for serving as officers of the Board.

ARTICLE V. COMMITTEES OF THE BOARD OF DIRECTORS

Section 5.01 Committees Generally

- (a) Committees of the Board. The Board of Directors, by resolution adopted by a majority of the entire Board of Directors may designate from among its members such committee or committees, each consisting of three (3) or more Directors, as they shall deem necessary or appropriate to fulfill its obligations ("Committees of the Board").
- (b) Committees of the Corporation. Committees, other than Committees of the Board, shall be committees of the Corporation ("Committees of the Corporation"). Such Committees of the Corporation may 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 of Directors.
- (c) Designation and Modification.
 - (1) There shall be the following Board Committees:
 - (i) The Executive Committee
 - (ii) Finance and Audit Oversight Committee

- (2) The designation of such Committees and the delegation thereto of authority as specified in these By-laws shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law.
 - (3) The Board of Directors, by resolution of a majority of the Directors then in office, may prescribe the number, nature, organization, composition or function of the Committees.
- (d) Appointment and Number of Committee Members.
Except as otherwise stated in these By-laws, the members and the chairpersons of all Committees, all of whom shall be members of the Board of Directors, shall be appointed by the Chairperson of the Board of Directors. The Chairperson shall announce the appointments, as soon as practicable, after the annual meeting of the Board of Directors. Members of such Committees and the chairpersons thereof shall, unless otherwise stated in the By-laws, hold office for one (1) year or until death, resignation, or removal. Resignation or removal from the Board shall constitute resignation or removal from all Committees thereof. No Committee shall include less than three (3) Directors.
- (e) Resignation or Removal.
- (1) Any member of a Committee may resign at any time by giving written notice of such resignation to the chairperson of such Committee or to the Chairperson or Secretary of the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by such Chairperson or such officer.
 - (2) Any member of any Committee may be removed at any time by the Board of Directors whenever, in the judgment of the Board of Directors, the best interests of the Corporation shall be served by such removal.
- (f) Vacancies.
- (1) Any vacancy on any Committee, or of the chairperson thereof, due to the resignation, removal or death of a member or of the chairperson of the Committee, shall be filled by appointment in the same manner as such member or chairperson was appointed.
 - (2) Whenever a member of any Committee, or the chairperson thereof, is unable to attend one (1) or more meetings of such Committee, or is otherwise temporarily unable to act as a member thereof, the Chairperson of the Board may appoint a Director to act as a member or chairperson of such Committee during the period of such inability.
- (g) Duties.
- (1) It shall be the duty of each Committee to make such reports as, from time to time, may be requested by the Board of Directors, or the Chairperson of the Board, or as required by these By-laws.
 - (2) In addition to the respective duties specifically assigned to Committees by the By-laws, each Committee shall perform such other duties in connection with the subject matter over which such Committee has jurisdiction as, from time to time, may be requested by the Board of Directors or the Chairperson of the Board.
- (h) Procedures.
Subject to the provisions of these By-laws, and to such directives as may be issued by the Board of Directors, each Committee shall establish its own rules of procedure.

(i) Meetings.

- (1) Except as otherwise provided in these By-laws, each Committee shall meet upon the call of the chairperson thereof, or upon the request of the Chairperson of the Board.
- (2) Except as otherwise provided in these By-laws, notice of the time and place of meetings of all Committees shall be as directed by the chairperson thereof. Unless required by law, such notice need not state the purpose of the meeting. A written waiver of notice of any meeting, signed and filed with the records of the Committee either before or after such meeting, shall be deemed equivalent to notice, as shall attendance by a member at such meeting.

(j) Quorum and Voting Requirements.

- (1) Except as otherwise provided in these By-laws, the presence of a majority of the members of a Committee is necessary and sufficient to constitute a quorum for the transaction of business.
- (2) The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Committee.

(k) Reports to Board of Directors.

All Committees shall make reports to the Board of Directors pertaining to the proceedings, recommendations and actions of such Committee.

(l) Indemnification.

The members of all Committees shall be entitled to the right of indemnification as set forth in these By-laws and shall be deemed entitled to the same coverage as is, or may be, afforded to Directors under the Corporation's liability insurance policy for actions taken in their capacities as Committee members.

Section 5.02 Executive Committee.

(a) Membership.

The Executive Committee shall consist of the Chairperson of the Board, who shall act as chairperson of the Committee; the Vice-Chairperson of the Corporation, who shall act as chairperson of the Committee in the absence of the Chairperson; the Secretary; and the Treasurer. The Chairperson of the Board shall have the power to appoint additional members to the Executive Committee, subject to the approval of the Board of Directors.

(b) Functions.

- (1) In order to provide continuity of control, the Executive Committee shall have, and may exercise the authority of the Board of Directors in the supervision and control of the affairs of the Corporation in the interval between meetings of the Board, subject to any prior limitations which may be imposed by the Board. It shall also make such policy decisions during any interim period as it shall deem necessary to carry out the objectives of the Corporation, provided such policy decisions are not inconsistent with those adopted by the Board, and provided further that the Committee submits same to the Board of Directors for approval at its next meeting in accordance with subsection (c) hereof. The Executive Committee shall annually review the compensation of the President and Chief Executive Officer.
- (2) Between Board meetings, the Executive Committee shall have and may exercise all of the authority of the Board of Directors, to the extent allowed by applicable law, but shall be required to notify the full Board of any actions it takes or decisions made, other than those in the ordinary course of operations, within a reasonable time thereafter. Notwithstanding the foregoing, actions taken by the Executive Committee shall not conflict with the policies and expressed wishes of the

Board and the Executive Committee shall not have the authority of the Board of Directors with respect to the following matters:

- (i) the filling of vacancies on the Board of Directors or any Committee thereof;
- (ii) the fixing of compensation of the Directors for serving on the Board or on any Committee thereof;
- (iii) the amendment or repeal of these By-laws, or the adoption of new By-laws;
- (iv) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable;
- (v) the appointment or removal of the Officers of the Corporation;
- (vi) the authorization of indemnification for expenses incurred by Directors, Officers, or other persons in defending civil or criminal actions;
- (vii) The filing of a petition for non-judicial dissolution of the Corporation; a plan of merger or consolidation of any action in connection with the sale or other disposition of all, or substantially, all, of the assets of the Corporation; and
- (viii) power or authority in any matter that the Board may not delegate to a committee under Section 712 and other applicable sections of the New York State Not-For-Profit Corporation Law.

(c) Report of Action to the Board.

All actions of the Executive Committee shall be reported to the Board at the first Regular Meeting of the Board held following any such action, and shall be subject to revision or modification by the Board.

(d) Meetings.

The Executive Committee shall meet upon the call of the Chairperson or Vice-Chairperson.

Section 5.03 Finance and Audit Oversight Committee.

(a) Membership.

The Finance and Audit Oversight Committee shall consist of not less than three (3) members of the Board of Directors, each of whom shall be independent Directors, as such term is defined in the Not-For-Profit Corporation Law. The Treasurer shall serve as Chairperson of the Committee.

(b) Functions. The Finance and Audit Oversight Committee shall have the following responsibilities:

- (1) Concerning itself with all matters relating to the financial condition of the Corporation, including making recommendations concerning the financial feasibility of the Corporation projects, acts and undertakings referred to it by the Board of Directors;
- (2) Assisting in the preparing and presenting to the Board of Directors, prior to the end of the fiscal year, capital and annual operating budgets showing the expected receipts, income and expenses for the ensuing year;
- (3) Reviewing and generally surveilling the Corporation's financial planning, its system of accounting controls, its handling and disbursement of funds, the collection or other disposition of the Corporation's accounts receivable and the recommendation to the Board of an auditor;

- (4) Overseeing financial audits and the accounting and financial reporting processes of the Corporation;
- (5) Annually retaining or renewing the retention of an independent auditor to conduct the audit and, upon completion thereof, reviewing the results of the audit and any related management letter with the independent auditor;
- (6) Reviewing with the independent auditor the scope and planning of the audit prior to the audit's commencement;
- (7) Upon completion of the audit, reviewing and discussing with the independent auditor:
 - (i) any material risks and weaknesses in internal controls identified by the auditor,
 - (ii) any restrictions on the scope of the auditor's activities or access to requested information,
 - (iii) any significant disagreements between the auditor and management, and
 - (iv) the adequacy of the Corporation's accounting and financial reporting processes;
- (8) Annually considering the performance and independence of the independent auditor;
- (9) Overseeing the adoption, implementation of, and compliance with the Conflicts of Interest and Related Party Transactions Policy and the Whistleblower, Non-Intimidation and Non-Retaliation Policy;
- (10) Overseeing the implementation and operation of the compliance program to ensure the Corporation's compliance with all federal and state laws and regulations; and
- (11) Reporting directly to the Board of Directors regarding the financial accounting and auditing practices of the Corporation.

Section 5.04 Minutes

Each Committee shall keep minutes of its proceedings.

ARTICLE VI. CONFLICT OF INTEREST/WHISTLEBLOWER POLICIES

The Corporation shall adopt a Conflict of Interest and Related Party Transactions Policy, which among its provisions shall include requirements regarding related party transactions, and a Whistleblower, Non-Intimidation and Non-Retaliation Policy. The Corporation shall review and amend such policies from time to time as appropriate and in accordance with applicable law.

ARTICLE VII. INDEMNIFICATION

Section 7.01 Indemnification.

The Corporation shall indemnify, to the full extent such indemnification is permitted by law, any person made, or threatened to be made, a party to, subject of, or otherwise involved in any (formal or otherwise) action, proceeding and/or investigation, whether civil (including administrative and investigative proceedings) or criminal, by reason of the fact that such person or such person's testator or intestate is or was a Director or Officer of the Corporation or serves or served any other Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Corporation. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such indemnification is permitted by law.

Section 7.02 Applicability and Non-Exclusivity.

Every reference in this Article VII to Directors and Officers of the Corporation shall include every Director and Officer thereof or former Directors and Officers thereof. The right of indemnification herein provided shall be in addition to any and all rights to which the Director, Officer employee or agent of the Corporation otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

ARTICLE VIII. FISCAL YEAR

Section 8.01 Fiscal Year

The fiscal year of the Corporation shall begin January 1st and end December 31st of each calendar year.

ARTICLE IX. AMENDMENTS

Section 9.01 Amendment of By-laws.

These By-laws of the Corporation may be amended, repealed, or adopted by the Board in accordance with Section 3.13.

Section 9.02 Conformity with Law.

Any amendments, emendations, alterations, changes and additions to, or deletions from, these By-laws shall be consistent with the laws of New York State which define, limit or regulate the powers of this Corporation or of its Directors.

ARTICLE X. LIMITATIONS

Section 10.01 Exempt Activities.

Notwithstanding any other provision of these Bylaws, no member, Director, Officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt from Federal income taxation under Code Section 501(a), as an organization described in Code Section 501(c)(3).

Section 10.02 Prohibition Against Sharing in Corporate Earnings.

No Director, Officer or employee of, or other person connected with, the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent either the payment to any such person of reasonable compensation for services rendered to or for the benefit of the Corporation or the reimbursement of expenses incurred by any such person on behalf of the Corporation, in connection with effecting any of the purposes of the Corporation, and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction or the Attorney General in accordance with Not-for-Profit Corporation Law, upon the application of the Board, exclusively to charitable, religious, scientific, literary or educational organizations that then qualify for exemption from Federal income taxation under Code 501(c)(3) and provide health care services to patients in Westchester County, New York or as otherwise set forth in the Corporation's Certificate of Incorporation.

ACKNOWLEDGEMENT

THE FOREGOING BY-LAWS, IN PRESENT FORM, were duly amended and adopted at a meeting on July 25, 2018 and ratification of said amendments are reflected in the minutes of the July 25, 2018 Board Meeting.

Dated: 7/25/18

Secretary:



**RESOLUTIONS
OF THE
BOARD OF DIRECTORS
OF
OPEN DOOR FAMILY MEDICAL CENTER, INC.**

WHEREAS, the Board of Directors (the “Board”) of Open Door Family Medical Center, Inc. (“Open Door”) previously approved a transaction between Open Door and Family Services of Westchester, Inc. (“FSW”), pursuant to which the parties proposed to affiliate their respective entities through a membership transaction, subject to the negotiation and approval by the respective Boards of Directors of a definitive affiliation agreement (the “Affiliation Agreement”), the execution of which was previously approved by this Board;

WHEREAS, pursuant to the Affiliation Agreement, Open Door would become the sole corporate member of FSW as of the closing of the transaction, which is contemplated to occur within thirty (30) days after receipt of all of the required regulatory approvals, as described in the Affiliation Agreement (the “Closing Date”);

WHEREAS, following the closing of the transactions described in the Affiliation Agreement, FSW will transfer to Open Door certain of FSW’s programs operated under New York Public Health Law Article 31 and licensed by the Office of Mental Health, and Open Door will become the new operator/sponsor of such Article 31 programs; and

WHEREAS, following the closing of the transactions contemplated by the Affiliation Agreement, the Board will amend Open Door’s Certificate of Incorporation as needed to effectuate the transactions contemplated by the Affiliation Agreement.

NOW THEREFORE, BE IT:

Authorization for Acquisition of Article 31 Licenses

RESOLVED, that, following closing under the Affiliation Agreement, Open Door shall accept transfer of the FSW Article 31 programs licensed by the New York State Office of Mental Health, as more specifically described in Exhibit C to the Affiliation Agreement, and Open Door shall become the new operator/sponsor of each such Article 31 program, subject to receipt of all necessary regulatory approvals; and be it further

Amendment of Certificate of Incorporation

RESOLVED, that, following the Closing Date, the Certificate of Incorporation of Open Door shall be amended substantially as set forth in Exhibit A hereto, to effectuate the transactions contemplated by the Affiliation Agreement, subject to such changes as the President shall, upon consultation with counsel, deem appropriate, including as may be requested by the New York State Office of Mental Health; and be it further

General Authorization and Ratification

RESOLVED, that each of the officers of Open Door is hereby authorized to take such further actions as he/she may deem necessary or appropriate to implement the foregoing resolutions; and be it further

RESOLVED, that all of the acts of the directors and officers of Open Door and of any person or persons designated and authorized to act by any of them in furtherance of these resolutions occurring to date are hereby ratified, confirmed, approved and adopted as acts of Open Door.

The undersigned hereby certifies that the foregoing resolutions were duly approved by the Board of Directors of Open Door at a meeting duly called and held on April 26, 2023 at which notice was duly given and a quorum was present and acting throughout.

Dated: March 22, 2023


By:

Secretary



Office of
Mental Health

KATHY HOCHUL
Governor

ANN MARIE T. SULLIVAN, M.D.
Commissioner

MOIRA TASHJIAN, MPA
Executive Deputy Commissioner

September 21, 2023

Kimberly Redmond
Paralegal
Garfunkel Wild, P.C.
350 Bedford Street
Stamford, CT 06901

Re: Certificate of Amendment of the Certificate of Incorporation for Open Door Family Medical Center, Inc.

Dear Ms. Redmond:

The Office of Mental Health has reviewed a draft copy (attached) of the Certificate of Amendment of the Certificate of Incorporation for Open Door Family Medical Center, Inc. submitted by your office on August 25, 2023. Approval on behalf of the Commissioner of Mental Health is attached.

If any changes are made to the enclosed prior to filing, please resubmit for review. Please send copies of the filing receipt when it is received by the Secretary of State.

If you have any questions, please contact Tiffany Mott at (518) 474-5570 or tiffany.mott@omh.ny.gov.

Sincerely,

Gina Bae

Gina Bae
Director
Bureau of Inspection and Certification

Enclosure

cc: Lindsay Farrell, Executive Director
Shonny Capodilupo
Theresa Brandow
Tammy Scherer
Kelly Bevins
Tiffany Mott



**STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
ALBANY, NEW YORK**

KNOW ALL PERSONS BY THESE PRESENTS;

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and Section 803 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment of the Certificate of Incorporation of

Open Door Family Medical Center, Inc.

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law requires an Operating Certificate issued by the Office of Mental Health unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated there under for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the Seal of the Department of Mental Hygiene is affixed this 11th day of September 2023.

Ann Marie T. Sullivan, MD, Commissioner
NYS Office of Mental Health

By: *Gina Bae*

Gina Bae
Director
Bureau of Inspection and Certification



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of February 2024, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Open Door Family Medical Center, Inc., dated August 22, 2023.

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director, Bureau of Program Counsel

Date: January 10, 2024

Subject: Pontiac Nursing Home, LLC - Operator Name Change

The attached package was prepared by Christopher Chin 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: Christopher Chin, Senior Attorney
Division of Legal Affairs, Bureau of Program Counsel

Date: January 18, 2024

Subject: Pontiac Nursing Home, LLC.: Name Change of Operator

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of a letter from Legal Counsel for Pontiac Nursing Home, LLC., Bridget L. Kehm, Esq., dated July 12, 2023 which includes a photocopy of the Articles of Organization of Pontiac Nursing Home, LLC signed by Carol A. Clark, Sole Organizer, dated July 29, 1999;
- 3) An executed photocopy of the proposed Certificate of Amendment of the Articles of Organization of Pontiac Nursing Home, LLC to change the Operator's name to East River Road Nursing and Rehabilitation Center, LLC, signed by Bridget L. Kehm, Esq., Authorized Person, dated July 12, 2023; and
- 4) The written consent of the members of Pontiac Nursing Home, LLC for the name change, dated June 16, 2023.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: January 18, 2024

Subject: Pontiac Nursing Home, LLC. - Name Change of Operator

Attached is the proposed Certificate of Amendment of the Articles of Organization of Pontiac Nursing Home, LLC. This business operates a nursing facility pursuant to Article 28 of the Public Health Law and seeks approval to change its name to “East River Road Nursing and Rehabilitation Center, LLC” for rebranding purposes. According to the applicant, the name change is sought to provide a better descriptive name for both the location of the facility, as well as the services of the facility. The current name of the operator did not reflect its location, nor the services provided as the facility. The proposed name accomplishes both these goals.

Public Health and Health Planning Council (PHHPC) approval is required for this change of corporate name pursuant to 10 NYCRR § 600.11(a)(4), because PHHPC previously approved of the entity and the filing of its Articles of Organization. The current Articles of Organization are attached along with the proposed new Articles of Organization reflecting the name change. Also attached is a resolution by the company’s members approving the name change and a letter dated July 12, 2023, from Bridget L. Kehm, attorney for the operator, which further explains the intent and meaning of the proposed name change. This is the applicant’s first request for approval for a name change.

There is no legal objection to the proposed name change.

Attachments

LAW OFFICES OF
Pullano & Farrow
PLLC

www.lawpf.com

Name: Bridget L. Kehm Esq.
Phone: 585-730-4773
Email: bkehm@lawpf.com

July 12, 2023

VIA ELECTRONIC MAIL
colleen.leonard@health.ny.gov

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Room 1805
Albany, New York 12237

**Re: Request to Approve a Name Change for Operator
Proposed Certificate of Amendment to the Articles of Organization
Pontiac Nursing Home, Operating Certificate #3702313N**

Dear Ms. Leonard:

We are writing on behalf of our client, Pontiac Nursing Home, LLC, regarding a request to change the name of this operator entity pursuant to 10 NYCRR §§ 401.3 and 600.11. Pontiac Nursing Home, LLC operates a skilled nursing facility known as Pontiac Nursing Home, which is located at 303 East River Road, Oswego, New York 13126.

The current name of the operator entity is Pontiac Nursing Home, LLC, as stated by its Articles of Organization filed on December 23, 1999 upon receiving consent of the Public Health and Health Planning Council. A copy of the filed Articles of Organization is enclosed.

The proposed new name of the operator is East River Road Nursing and Rehabilitation Center, LLC. Upon receipt of the Public Health and Health Planning Council's consent to change the legal name of the operator as indicated herein, we will submit a copy of the proposed Certificate of Assumed Name to the Bureau of Project Management for the operator to operate the facility under the assumed name of East River Road Nursing and Rehabilitation Center.

There are several reasons for the requested change in the name of the operator. The proposed name of East River Road Nursing and Rehabilitation Center, LLC (as further shortened

July 12, 2023
Letter to C. Leonard

to East River Road Nursing and Rehabilitation Center pursuant to its proposed Certificate of Assumed Name) is overall a better descriptive name for both the location of the facility, as well as the services of the facility. The current name of the operator/facility does not refer to its location on East River Road next to the Oswego River. The current name of the operator/facility also does not reference the nursing and rehabilitation services that the facility provides. The new proposed name therefore accomplishes both goals. Additionally, the operator proposes to change its legal name in an effort to rebrand the facility.

We have included a copy of the executed proposed Certificate of Amendment to the Articles of Organization for the Council's review and approval. Please let us know if you have any questions or concerns regarding the proposed name change. Any correspondence regarding this request may be sent to our attention.

Sincerely,

PULLANO & FARROW



Bridget L. Kehm, Esq.

Enclosures

cc: Michael Stelluti (michael.stelluti@health.ny.gov)
Patrick Pullano, Esq. (ppullano@lawpf.com)

Attachments to Letter to C. Leonard re:
Operator Name Change

Attachment:

Filed Articles of Organization for Pontiac Nursing Home, LLC

(see attached)

Law Offices of Pullano & Farrow PLLC

69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773 phone • 888.971.3736 fax

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
May 14, 2019.

A handwritten signature in black ink that reads "Whitney Clark". The signature is written in a cursive style.

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

f 991223000484

ARTICLES OF ORGANIZATION
OF
PONTIAC NURSING HOME, LLC

Under Section 203 of the Limited Liability Company Law
of the State of New York

THE UNDERSIGNED, being a natural person at least eighteen (18) years of age and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "LLCL"), hereby certifies that:

FIRST: The name of the new limited liability company is PONTIAC NURSING HOME, LLC (the "Company").

SECOND: The purpose of the Company is to operate a residential health care facility known as Pontiac Nursing Home, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

THIRD: The county within the state in which the office of the Company is to be located is Oswego. More specifically, the location of the principal office of the limited liability company is 303 East River Road, Oswego, New York 13126.

FOURTH: The Secretary of State is designated as the 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 303 East River Road, Oswego, New York 13126.

FIFTH: The Company is to be managed by one or more of the Members. Unless the Members agree in writing, all decisions regarding the management of the Company's business, operations and affairs shall be made by the consent or approval of Members holding at least seventy-six percent (76%) of the units. This paragraph FIFTH setting forth the management structure nor the provision setting forth such structure of the Company may not be deleted, modified or amended without the approval of the Department of Health.

SIXTH: No person may own ten percent (10%) or more of the membership interests of the limited liability company who has not been approved for the ownership of such membership interests by the Public Health Council.

|

SEVENTH: A member's interest in the limited liability company may be evidenced by a certificate issued by the limited liability company. All such certificates, if any, shall bear on the face thereof the following:

- (1) no person shall own ten percent (10%) or more of the membership interests of the limited liability company unless he has been approved for such ownership by the Public Health Council;
- (2) a statement that any transfer, assignment or other disposition of ten percent (10%) or more of the membership interests or of ten percent (10%) of the voting rights thereunder of the limited liability company or the transfer, assignment or other disposition of the membership interests or voting rights of the limited liability company which results in the ownership or control of more than ten percent (10%) of the membership interests or voting rights thereunder of the limited liability company by any person shall be subject to approval by the Public Health Council; and
- (3) a statement that no membership interests or voting rights thereunder of the limited liability company may be owned or controlled by a corporate member whose corporate stock is owned by another corporation.

EIGHTH: The membership interests of the limited liability company shall consist of only one class and any transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with Public Health Law Section 2801-a(4)(b).

IN WITNESS WHEREOF, we have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this 29th day of July, 1999.



Carol A. Clark
Sole Organizer
O'CONNELL AND ARONOWITZ
100 State Street
Albany NY 12207
Tel. (518) 462-5601



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

December 15, 1999



Mr. Philip J. Sgarlata
O'Connell and Aronowitz
100 State Street
Albany, New York 12207-1885

Re: Articles of Organization of Pontiac Nursing Home, LLC

Dear Mr. Sgarlata:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 22nd day of October, 1999, I hereby certify that the Public Health Council consents to the filing of the Articles of Organization of Pontiac Nursing Home, LLC, dated July 29, 1999.

Sincerely,

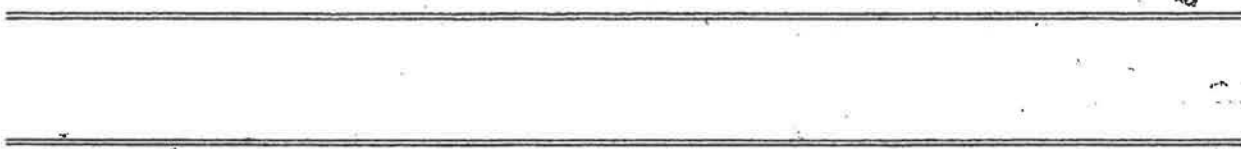
Karen S. Westervelt
Executive Secretary

3

ARTICLES OF ORGANIZATION
OF
PONTIAC NURSING HOME, LLC

991223000484

Under Section 203 of the Limited Liability Company Law
of the State of New York



O'CONNELL AND ARONOWITZ, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

100 State Street

Albany, New York 12207

AREA CODE 518 462-5601

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 23 1999

TAX \$

BY: JM

4

991223000508

Attachments to Letter to C. Leonard re:
Operator Name Change

Attachment:

Proposed Certificate of Amendment to the Articles of Organization for
Pontiac Nursing Home, LLC
to Change the Legal Name to
East River Road Nursing and Rehabilitation Center, LLC

(see attached)

Law Offices of Pullano & Farrow PLLC

69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773 phone • 888.971.3736 fax

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF ORGANIZATION OF
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

FIRST: The name of the limited liability company is Pontiac Nursing Home, LLC.

SECOND: The Articles of Organization were filed by the New York Department of State on December 23, 1999.

THIRD: The Articles of Organization are amended by this Certificate of Amendment to change the name and purpose of the limited liability company by amending the **FIRST** and **SECOND** paragraphs as follows:

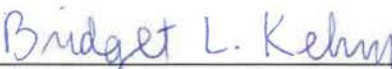
Paragraph **FIRST** of the Articles of Organization relating to the name of the limited liability company is hereby amended to read in its entirety as follows:

FIRST: The name of the limited liability company is East River Road Nursing and Rehabilitation Center, LLC.

Paragraph **SECOND** of the Articles of Organization relating to the purpose of the limited liability company name is hereby amended to change the name of the residential health care facility which the limited liability company operates and is hereby amended to read in its entirety as follows:

SECOND: The purpose of the Company is to operate a residential health care facility known as East River Road Nursing and Rehabilitation Center, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

IN WITNESS WHEREOF, this certificate has been subscribed to this 12th day of July, 2023.



By: Bridget L. Kehm, Esq., Authorized Person

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF ORGANIZATION OF
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

Filed by:
Law Offices of Pullano & Farrow PLLC
69 Cascade Drive, Suite 307
Rochester, NY 14614

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF ORGANIZATION OF
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

FIRST: The name of the limited liability company is Pontiac Nursing Home, LLC.

SECOND: The Articles of Organization were filed by the New York Department of State on December 23, 1999.

THIRD: The Articles of Organization are amended by this Certificate of Amendment to change the name and purpose of the limited liability company by amending the FIRST and SECOND paragraphs as follows:

Paragraph FIRST of the Articles of Organization relating to the name of the limited liability company is hereby amended to read in its entirety as follows:

FIRST: The name of the limited liability company is East River Road Nursing and Rehabilitation Center, LLC.

Paragraph SECOND of the Articles of Organization relating to the purpose of the limited liability company name is hereby amended to change the name of the residential health care facility which the limited liability company operates and is hereby amended to read in its entirety as follows:

SECOND: The purpose of the Company is to operate a residential health care facility known as East River Road Nursing and Rehabilitation Center, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

IN WITNESS WHEREOF, this certificate has been subscribed to this 12th day of July, 2023.


By: Bridget L. Kehm, Esq., Authorized Person

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF ORGANIZATION OF
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

Filed by:
Law Offices of Pullano & Farrow PLLC
69 Cascade Drive, Suite 307
Rochester, NY 14614

**WRITTEN CONSENT OF
THE MEMBERS OF
PONTIAC NURSING HOME, LLC**

June 16, 2023

The undersigned, being all of the members of Pontiac Nursing Home, LLC a New York limited liability company (“**Company**”), do hereby take, pursuant to the New York Limited Liability Company Law, the following action, which action is required or permitted to be taken by vote, without a meeting, on written consent:

Name Change, Notice to the Department of Health, and Biennial Statement

RESOLVED, that it is in the best interests of the Company to change the name of the Company to East River Road Nursing and Rehabilitation Center, LLC by filing a Certificate of Amendment of the Articles of Organization, attached as Exhibit A.

RESOLVED, that it is in the best interests of the Company to file a Certificate of Assumed Name to do business as “East River Road Nursing and Rehabilitation Center” by filing a Certificate of Assumed Name, attached hereto as Exhibit B.

RESOLVED, that the Law Offices of Pullano & Farrow PLLC is hereby authorized to send in notice to the New York State Department of Health’s Public Health and Health Planning Council and Bureau of Project Management as required by 10 NYCRR 600.11 and 401.3 with respect to the proposed name change of an operator entity and the proposed new assumed name of an operator entity.

RESOLVED, that Patrick Pullano, Esq. and/or Bridget L. Kehm, Esq. of the Law Offices of Pullano & Farrow PLLC are each hereby authorized to sign the proposed Certificate of Amendment to the Articles of Organization and the Certificate of Assumed Name as an authorized person of Company.

RESOLVED, that the Law Offices of Pullano & Farrow PLLC is hereby authorized to file the Certificate of Amendment to the Articles of Organization upon receiving consent from the Public Health and Health Planning Council.

RESOLVED, that the Law Offices of Pullano & Farrow PLLC is hereby authorized to file the Certificate of Assumed Name upon receiving consent from the New York State Department of Health Bureau of Project Management.

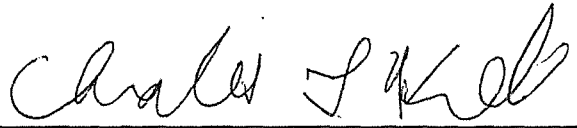
RESOLVED, that Patrick Pullano, Esq. and/or Bridget L. Kehm, Esq. of the Law Offices of Pullano & Farrow PLLC are each hereby authorized to sign and file a Biennial Statement of Company with the New York State Department of State as an authorized person of Company.

[Remainder of Page Intentionally Remains Blank. Signature Page Follows]

IN WITNESS WHEREOF, we have executed this Written Consent as of the date noted above. This Written Consent may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



Cosimo Mastropierro, Member



Charles Knoll, Member

Exhibit A

[see attached]

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF ORGANIZATION OF
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

FIRST: The name of the limited liability company is Pontiac Nursing Home, LLC.

SECOND: The Articles of Organization were filed by the New York Department of State on December 23, 1999.

THIRD: The Articles of Organization are amended by this Certificate of Amendment to change the name and purpose of the limited liability company by amending the FIRST and SECOND paragraphs as follows:

Paragraph FIRST of the Articles of Organization relating to the name of the limited liability company is hereby amended to read in its entirety as follows:

FIRST: The name of the limited liability company is East River Road Nursing and Rehabilitation Center, LLC.

Paragraph SECOND of the Articles of Organization relating to the purpose of the limited liability company name is hereby amended to change the name of the residential health care facility which the limited liability company operates and is hereby amended to read in its entirety as follows:

SECOND: The purpose of the Company is to operate a residential health care facility known as East River Road Nursing and Rehabilitation Center, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

IN WITNESS WHEREOF, this certificate has been subscribed to this ____ day of _____, 2023.

By: Bridget L. Kehm, Esq., Authorized Person

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF ORGANIZATION OF
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

Filed by:
Law Offices of Pullano & Farrow PLLC
69 Cascade Drive, Suite 307
Rochester, NY 14614

Exhibit B

[see attached]

CERTIFICATE OF ASSUMED NAME
OF
EAST RIVER ROAD NURSING AND REHABILITATION CENTER, LLC

Under Section 130 of the General Business Law of the State of New York

1. The name of the limited liability company is:

East River Road Nursing and Rehabilitation Center, LLC (“Company”)
2. The Company was formed under the New York Limited Liability Company Law
3. The Corporation will be doing business under the assumed name:

East River Road Nursing and Rehabilitation Center
4. The Company’s principal place of business in New York State is:

303 East River Road
Oswego, New York 13126
5. The Company will be doing business under the assumed name in the following counties in the State of New York:

Oswego
6. The address at which the Company will be doing business under the assumed name is:

303 East River Road
Oswego, New York 13126

Date: _____ 2023

Bridget L. Kehm, Esq., Authorized Person

CERTIFICATE OF ASSUMED NAME
OF
EAST RIVER ROAD NURSING AND REHABILITATION CENTER, LLC

Under Section 130 of the General Business Law of the State of New York

Filed by:
Law Offices of Pullano & Farrow PLLC
69 Cascade Drive, Suite 307
Rochester, NY 14614

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of February 2024, approves the filing of the Certificate of Amendment of the Articles of Organization of Pontiac Nursing Home, LLC, dated July 12, 2023.

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel

Date: January 10, 2024

Subject: Proposed Amended and Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc. to Amend its Corporate Purposes

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: January 18, 2024

SUBJECT: Proposed Amended Restated Certificate of Incorporation of The
Guidance Center of Westchester, Inc. to Amend its Corporate
Purposes

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. A letter dated May 2, 2023, from Amy Poirier on behalf of The Guidance Center of Westchester, Inc. to the Department;
3. The resolutions of the Supports for Living, Inc., the sole member of The Guidance Center of Westchester, Inc. approving the amended and restated Certificate of Incorporation dated April 26, 2023;
4. The 1984 Certificate of Amendment of the Certificate of Incorporation of The Guidance Center of Westchester, Inc. with corresponding Public Health Council approval; and
5. The Proposed Amended Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc.

Attachments

cc: Jason Corvino

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: January 18, 2024

Subject: Proposed Amended Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc. to Amend its Corporate Purposes

The Guidance Center of Westchester, Inc. (GCW) requests Public Health and Health Planning Council (PHHPC) approval of the proposed amendment and restatement of its certificate of incorporation.

GCW, a New York not-for-profit charitable corporation was formed on January 24, 1950, with the stated purpose to establish, maintain and operate a diagnostic and treatment clinic and dispensary for behavior problems and emotional maladjustments in Westchester County. Subsequently, in a 1984 Certificate of Amendment of the Certificate of Incorporation, GCW was approved by PHHPC to operate a Diagnostic and Treatment Center as defined by Article 28 of Public Health law.

The proposed amendment and restatement to the Certificate of Incorporation would add specific language to its purposes that includes the operation of outpatient programs to accommodate mentally disabled patients under Article 31 of the Mental Hygiene Law.

Attached is a May 2, 2023, letter from Amy Poirier on behalf of GCW to PHHPC, the Bylaws of GCW, the resolution of a vote of the sole Member acting through its Board of Directors approving the amendment, the 1984 Certificate of Amendment of the Certificate of Incorporation of GCW as well as the proposed Restated Certificate of Incorporation of GCW.

There is no legal objection to the proposed Restated Certificate of Incorporation of GCW, and it is in legally acceptable form.

Attachments



CRUSH & VARMA
LAW GROUP PC

Crush & Varma Law Group P.C.

15 Matthews Street, Suite 301
Goshen, NY 10924

(845) 615-9010
www.cvlawgroup.com

May 2, 2023

NYS Public Health and
Health Planning Council
Via Email: phhpc@health.ny.gov

Re: Approval of Restated Certificate of Incorporation of
The Guidance Center of Westchester, Inc.
Our File No.: 1214.45

To Whom It May Concern:

The Guidance Center of Westchester, Inc., a New York not-for-profit charitable corporation ("The Guidance Center"), is approved by the Public Health and Health Planning Council ("PHHPC") to operate a Diagnostic and Treatment Center as defined by Article 28 of the Public Health Law.

The Guidance Center is amending its Certificate of Incorporation, *inter alia*, to add the following specific language to its purposes: "*To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate.*"

To this end, and due to the fact that the Certificate of Incorporation of the Guidance Center has been amended several times through the years, and has never been restated, The Guidance Center desires to amend and restate its Certificate of Incorporation.

As a result of filing such amended and restated Certificate of Incorporation ("Restated Certificate of Incorporation") with the Department of State, there will be no changes in the purposes of The Guidance Center pertaining to the operation and provision of PHHPC services, as previously approved by PHHPC. Please find enclosed the original Certificate of Incorporation of the Guidance Center, with all amendments made to date for your convenience and reference.

NYS Public Health and
Health Planning Council
May 2, 2023
Page 2

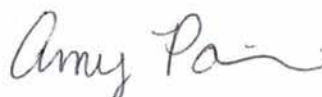
The Office of Mental Health (“OMH”) has approved the amendment to the Certificate of Incorporation. The OMH approval is also attached for your convenience.

In accordance with Section 404(o) of the New York Not-for-Profit Corporation Law, we seek the approval of PHHPC of the Restated Certificate of Incorporation (enclosed with this letter) to attach to the Restated Certificate of Incorporation for filing with the New York Secretary of State.

Please provide the required approval to my attention at the address listed above, or via email if possible at vikas@cvlawgroup.com. If you have any questions regarding the enclosed documents, or need additional information, please do not hesitate to contact my office at (845) 615-9010.

We would greatly appreciate it if this request could be expedited in any way.

Yours sincerely,



For Vikas Varma

Enclosures



**STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
ALBANY, NEW YORK**

KNOW ALL PERSONS BY THESE PRESENTS;

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and Section 805 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment to the Certificate of Incorporation of

The Guidance Center of Westchester, Inc.

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law requires an Operating Certificate issued by the Office of Mental Health unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated there under for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the Seal of the Department of Mental Hygiene is affixed this 10th day of April 2023:

Ann Marie T. Sullivan, MD
Commissioner
NYS Office of Mental Health

By: *Gina Bae*
Gina Bae, Director
Bureau of Inspection and Certification



**RESOLUTIONS
OF
THE GUIDANCE CENTER OF WESTCHESTER, INC. (“TGCW”)
AND
ACCESS: SUPPORTS FOR LIVING, INC. (the “Sole Member”)**

Adopted at a Joint Meeting of the Sole Member and
the Board of Directors

Held on April 26, 2023

Re: Authorizing the Restated Certificate of Incorporation of The Guidance Center of
Westchester, Inc.

WHEREAS, Access: Supports for Living Inc. is the sole member (the “Sole Member”) of The Guidance Center of Westchester, Inc. (“TGCW”); and

WHEREAS, the members of the Board of Directors of the Sole Member and TGCW desire to amend and restate the Certificate of Incorporation of TGCW pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York; and

WHEREAS, to effect the amendment and restatement TGCW is required to file a Restated Certificate of Incorporation of TGCW with the Department of State of the State of New York (the “Restated Certificate”), the form of which has been presented to the meeting; and

WHEREAS, the members of the Board of Directors of the Sole Member and TGCW have reviewed and discussed the amendment and restatement, and the filing of the Restated Certificate and the documents related thereto, and have found it to be in the best interests of the Sole Member and TGCW, to file and effect the Restated Certificate.

NOW, THEREFORE, IT IS:

RESOLVED, that the actions of Ronald J. Colavito, as President and Chief Executive Officer of the Corporation and as President and Chief Executive Officer of TGCW and other officers of the Sole Member and TGCW, taken in connection with the amendment and restatement, be and hereby are, authorized, ratified and approved in all respects; and it is further

RESOLVED, that the Restated Certificate, in the form presented to the meeting, and annexed hereto as **Exhibit A**, is hereby approved, with such execution being evidence of such determination, and further that Ronald J. Colavito, as President and Chief Executive Officer of the Sole Member and TGCW, be and hereby is, authorized and directed, in the name of and on behalf of TGCW, to execute and deliver the Restated Certificate; and it is further

RESOLVED, that in connection with the amendment and restatement, Ronald J. Colavito, as President and Chief Executive Officer of the Sole Member

and TGCW, be and hereby is, authorized and directed, in the name of and on behalf of the Sole Member and TGCW, to do such things, take such actions and to execute and deliver such certificates and documents as shall be necessary, in the discretion of such officer doing, taking, executing and delivering same, to obtain the necessary consents and approvals of any other governmental agencies and other persons and entities, in each case as required to effect the filing of the Restated Certificate; and it is further

RESOLVED, that Ronald J. Colavito, as President and Chief Executive Officer of the Sole Member and TGCW, be and hereby is, authorized and directed, in the name of and on behalf of the Sole Member and TGCW, to do such things, take such actions and to execute and deliver such certificates and documents as shall be necessary, in the discretion of such officer doing, taking, executing and delivering same, to effectuate the purposes and intents of the foregoing resolutions.

A handwritten signature in black ink that reads "Thomas Buchanan". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas J. Buchanan, Chairperson

Exhibit A

RESTATED

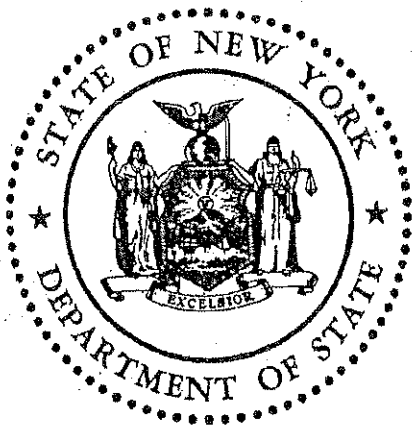
CERTIFICATE OF INCORPORATION

OF

THE GUIDANCE CENTER OF WESTCHESTER, INC.

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
September 11, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF
INCORPORATION OF THE GUIDANCE CENTER OF NEW ROCHELLE,
INC. UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORA-
TION LAW.

The undersigned, President and Secretary of the
Guidance Center of New Rochelle, Inc. do hereby certify
as follows:

1. The name of the corporation is the Guidance
Center of New Rochelle, Inc.
2. The Certificate of Incorporation was filed by
the Department of State on February 8, 1950.
3. The Certificate of Incorporation is hereby
amended to add an additional subdivision to be numbered 2(c)
to read as follows:
2(c). To establish, operate and maintain a
Diagnostic and Treatment Center, as that term is defined by
Article 27 of the Public Health Law.
4. The amendment of the Certificate of Incorporation
was authorized by vote of a majority of all members entitled
to vote thereon at a meeting of members held on September 20,
1983.
5. The Corporation shall hereafter be a Type C
Corporation.

B064318

6. The Certificate of Incorporation as filed were endorsed and approved by the Department of Social Welfare of the State of New York and by Hon. James W. Bailey, a Justice of the Supreme Court of the State of New York in Westchester County New York and prior to the delivery of this Certificate of Amendment to the Department of State for filing the consent of the Public Health Council of the State of New York Department of Health will be endorsed on and annexed to the Certificate as well as the approval thereof by the New York State Department of Social Welfare and the Supreme Court of the State of New York, Westchester County.

7. The Secretary of State is hereby appointed as Agent of the Corporation upon whom process against it may be served and the Post Office address within or without this State to which the Secretary of State shall mail a copy of any process against it serve upon him is 70 Grand Street, New Rochelle, New York 10801.

IN WITNESS WHEREOF, we have signed this Certificate
the 3rd day of October, 1983.

Allan Ross

Signature

Allan Ross

Name

President

Claire K. Brown

Signature

Claire K. Brown

Secretary

2

STATE OF NEW YORK
COUNTY OF WESTCHESTER

SS:

ALLEN ROSS and CLAIRE BROWN both being duly sworn,
depose and say: That he is the President and she is the Secre-
tary of the Guidance Center of New Rochelle, Inc., the corporation
named in the foregoing Certificate and they are the persons
who signed the same and know the contents thereof and that the
same is true to their own knowledge.

Sworn to before me this

3rd day of October, 1983.

Lauren Wooley
LAUREN WOOLEY
Notary Public, State of New York
My Comm. No. 41-123456
Qualified in Westchester County
Commenced Service March 22, 1981

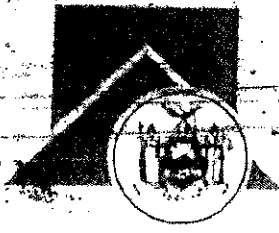
Notary Public

Allen Ross

ALLEN ROSS

Claire Brown

CLAIRE BROWN



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

October 27, 1983

KNOW ALL MEN BY THESE PRESENTS:

I hereby certify that after inquiry and investigation, the application of The Guidance Center of New Rochelle, Inc. to operate a diagnostic and treatment center is APPROVED, the contingency having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingency at its meeting of September 16, 1983.

The Certificate of Amendment of the Certificate of Incorporation of The Guidance Center of New Rochelle, Inc. is also 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.

Mary A. Massaroni
MARY A. MASSARONI
Acting Secretary

Sent to: Bernard Margolis, Esq.
271 North Avenue
New Rochelle, New York 10801

cc: Mr. Henry Herbstein
Executive Director
The Guidance Center of
New Rochelle, Inc.
50 Grand Street
New Rochelle, New York 10801

Robert Hamburg, M.D.
James Introne
Victor Stool, M.D.
Gerald Thomson, M.D.

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

by:

Bernard Abram
Assistant Attorney General

Date:

Jan 4, 1984

I, HON. GEORGE BEISHEIM, JR., JUSTICE, a Justice

of the Supreme Court of the State of New York for the 9th Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of The Guidance Center of New Rochelle, Inc. and consent that the same be filed.

Date:

1/2/84
White Plains NY

George Beisheim, Jr.
JSC

HON. GEORGE BEISHEIM, JR., JUSTICE

Index No. **B064318**

Year 19

**CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
THE GUINANCE CENTER OF NEW
ROCHELLE, INC.**
**UNDER SECTION 501 OF THE NOT-
FOR-PROFIT CORPORATION LAW.**

BERNARD WARGOLIS

271 NORTH AVENUE
ROCHELLE, N.Y. 10801

299400

STATE OF NEW YORK
DEPARTMENT OF STATE

PAID JAN 21 1984

AMT. OF GREEN \$	100
FILING FEE \$	30
TAX \$	
COUNTY FEE \$	
COPY \$	
EXEM \$	
REFUND \$	
SPEC HANDLE \$	

Wargolis
Wargolis
Wargolis

Wargolis
Wargolis
Wargolis

Approved for
Secretary of State
Is hereby admitted
Notary Public
Notary Public

RESTATED
CERTIFICATE OF INCORPORATION
OF
THE GUIDANCE CENTER OF WESTCHESTER, INC.

Under Section 805 of the Not-For-Profit Corporation Law of the State of New York

The undersigned, for the purposes of amending and restating the Certificate of Incorporation of the Corporation pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York, does hereby certify:

1. The name of the corporation is The Guidance Center of Westchester, Inc. (the "Corporation"). The name under which the Corporation was originally formed was The Guidance Center of New Rochelle, Inc.
2. The certificate of incorporation of the Corporation (the "Certificate of Incorporation") was filed by the New York State Department of State on February 8, 1950. A Certificate of Amendment was filed on January 31, 1984; a Certificate of Amendment was filed on April 30, 1987; a Certificate of Amendment was filed on January 13, 2012; and a Certificate of Amendment was filed on January 25, 2022.
3. The law the Corporation was formed under is the Membership Corporation Law of the State of New York.
4. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
5. The Certificate of Incorporation is amended as follows:
 - (a) Paragraph 2 of the Certificate of Incorporation, relating to the purposes for which the Corporation is to be formed, is hereby amended to add the following clause as clause 2(g):

"2(g) To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate."
 - (b) Paragraph 5 of the Certificate of Incorporation, relating to the number of directors of the Corporation, is hereby deleted in its entirety and replaced with the following:

“5. The activities of the Corporation shall be managed by its Board of Directors. The number of Directors constituting the entire Board shall not be less than three (3) and not more than twenty-five (25); and subject to such minimum may be increased or decreased from time to time by amendment of the by-laws in a manner not prohibited by law.”

(c) Paragraph 6 of the Certificate of Incorporation, relating to the names and residences of the initial directors of the Corporation, is hereby deleted in its entirety and replaced with the following:

“6. Access: Supports for Living Inc., shall be the single member of the Corporation.”

(d) Paragraph 7 of the Certificate of Incorporation, relating to the original subscribers to the Certificate of Incorporation, is deleted in its entirety and replaced with the following:

“7. 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 in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors, officers or any private person. The Corporation is a charitable corporation.”

(e) A new Paragraph 8 of the Certificate of Incorporation relating to the Corporation’s tax-exempt status is hereby added to read as follows:

“8. The following language is related 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 2.

(a) Notwithstanding any other provisions of these articles, the Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the “Code”) and shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) or corresponding provisions of any subsequent Federal tax laws or (b) by a corporation, contributions to which are deductible under §170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, director, officer of the Corporation, or any private individual, and no director, officer of the Corporation or any private

individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation except as otherwise provided by Section 501(h) of the Code, as amended, or participating in, or intervening in including the publication or distribution of statements, any political campaign on behalf of any candidates for public office.”

(f) Paragraph 8 of the Certificate of Incorporation, relating to the service of process address of the Corporation, shall be renumbered as Paragraph 9.

(g) Paragraph 9 of the Certificate of Incorporation, relating to the dissolution of the Corporation, shall be renumbered as Paragraph 10.

6. The certificate of incorporation is thereby restated as amended to read as follows:

RESTATED CERTIFICATE OF INCORPORATION
OF
THE GUIDANCE CENTER OF WESTCHESTER, INC.

1. The name of the corporation is The Guidance Center of Westchester, Inc.

2. The purposes for which it is to be formed are:

(a) To establish, maintain and operate, regardless of race, creed or color, a guidance center as a diagnostic and treatment clinic and dispensary for behavior problems and emotional maladjustments in children and adults; to promote mental health in and to render psychotherapeutic treatment to children and adults; and to cooperate with governmental and private agencies concerned with the mental health of children and adults.

(b) To solicit, collect, and otherwise raise funds for the above purposes.

(c) To establish, operate and maintain a Diagnostic and Treatment Center, as that term is defined by Article 28 of the Public Health Law.

(d) To establish, maintain and operate health, mental health, educational, and human service programs, and to solicit, collect and otherwise raise funds for the foregoing purposes.

(e) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services.

(f) To operate early intervention program services within the meaning of Title II-A of Article 25 of the Public Health Law and the Codes Rules and Regulations adopted pursuant thereto as each may be amended from time to time which shall require as a condition precedent before engaging in the conduct of any such services obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes of Rules and Regulations of the State of New York, or any other applicable law or regulation.

(g) To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate.

3. The territory in which its operations are principally to be conducted is Westchester County, State of New York.

4. The location of the office is Westchester County, New Rochelle, New York.

5. The activities of the Corporation shall be managed by its Board of Directors. The number of Directors constituting the entire Board shall not be less than three (3) and not more than twenty-five (25); and subject to such minimum may be increased or decreased from time to time by amendment of the by-laws in a manner not prohibited by law.

6. Access: Supports for Living Inc., shall be the single member of the Corporation.

7. 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 in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors, officers or any private person. The Corporation is a charitable corporation.

8. The following language is related 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 2.

(a) Notwithstanding any other provisions of these articles, the Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) or corresponding provisions of any subsequent Federal tax laws or (b) by a corporation, contributions to which are deductible under §170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, director, officer of the Corporation, or any private individual, and no director, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation except as otherwise provided by Section 501(h) of the Code, as amended, or participating in, or intervening in including the publication or distribution of statements, any political campaign on behalf of any candidates for public office.


9. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is: The Guidance Center of Westchester, Inc., c/o Access: Supports for Living Inc., 15 Fortune Road West, Middletown, New York 10941.

10. In the event of the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation and after complying with Federal and State agency assurances regarding the use of funds received through certain grants, shall distribute in proportions considered prudent, all of the remaining assets and property of the Corporation to Access: Supports for Living Inc. ("Access"), or any other entity the financial information of which is consolidated with Access for financial statement purposes, collectively "Access Affiliates", or the Access: Supports for Living Foundation Inc. (the "Foundation" with Access and the Access Affiliates, the "System"), provided Access, such Access Affiliate or the Foundation, as the case may be, shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (or the corresponding provision of any future United States Internal Revenue Law) (the "Code") subject to proper authorization of the Office of the New York Attorney General or an order of a Justice of the Supreme Court of the State of New York, as appropriate and applicable; if no entity in the System 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 charitable, religious, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, subject to proper authorization of the Office of the New York Attorney General or an order of a Justice of the Supreme Court of the State of New York, as appropriate and applicable.

7. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is: The Guidance Center of Westchester, Inc., c/o Access: Supports for Living Inc., 15 Fortune Road West, Middletown, New York 10941.

8. This Restated Certificate of Incorporation was duly authorized by the written consent of the single member of the Corporation.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirms the statements herein as true under the penalties of perjury this 2nd day of May, 2023.

By: 
Name: Ronald J. Colavito
Title: President and Chief Executive Officer

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of February 2024, approves the filing of the Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc., dated May 2, 2023.